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The national assembly in the Anglo-Saxon period.

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THE NATIONAL ASSEMBLY IN THE ANGLO-SAXON PERIOD

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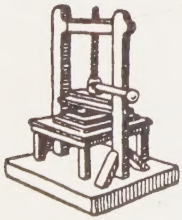
BY

F. LIEBERMANN

Burt Franklin Research and Source Works Series #21



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I. 1. 'The bickerings of the Anglo-Saxons (said John Milton) to recount, what more worth is it than to chronicle the wars of kites or crows, flocking and fighting in the air?[1]' If we to-day could only reconstruct an edifice worthy to be called Anglo-Saxon history, we should hardly feel the want of human interest. Unfortunately, however, English life before the Norman conquest left us nothing better than a vast field of scattered fragments. Still among them, one institution can never cease to deserve the attention of the historian of European or American civilisation, because it is one of the lineal ancestors of the British Parliament, to which the legislative assemblies of all the neighbours reverently look up as to their model and their teacher.

The attempt to frame a definition of the witena gemot has seemed unadvised to the latest historian of earliest England[2], since this institution was 'essentially vague, fluctuating and incoherent'. These drawbacks, however, from which no constitutional origins are free, did not deter Kemble, Waitz, Stubbs or Maitland. It is under the auspices of the Manes of these departed heroes that the following attempt is ventured.

2. The witena gemot appeared to the Anglo-Saxons important enough to initiate, like the coronation of a king, an epoch in chronology. Amnesty, for instance, covered the crimes committed before a certain gemot.[3] But no theoretical description of the institution has reached us from the Middle ages; in England, as elsewhere, political literature[4] does not begin before the strife about investiture,

[1]) Cf. Firth in *Proc. Brit. Acad.* 1908, 248.
[2]) Hodgkin *Hist. of Engl.* 232.
[3]) Liebermann *Gesetze der Angelsachsen* II 738, n. 10.
[4]) Below § 69, 70.

a generation after the Anglo-Saxon witena gemot had ended. Chroniclers indeed mention a gemot casually, homilists and poets contribute here and there a line, and law compilers under Henry I. even a chapter about the witan. But by far the richest source for our knowledge of the witena gemot are its own products, about 2000 charters and about forty laws.

3. Kemble, after collecting for the first time most of the records[1], turned also their contents to the best account; his picture of the witan[2], designed with firm and clear strokes, left even to Stubbs[3] little to improve. When later on the historian of the Norman conquest[4] was seduced by fervent patriotism and democratic bias to vindicate the origin of parliament for the Old English people alone, Dr. Round[5] revealed another root of the Anglo-Norman Great council in Norman feudalism.

4. While the Norman conquest marks a deep incision in the development of the national assembly, the long history that goes before, though stretching over half a millennium, allows no division into epochs. Neither the Westsaxon supremacy nor the Danish conquest cause a decided change in the gemot. Its functions and power differ indeed considerably at various times, but these changes do not coincide with chronological landmarks.

5. The oldest law of England, that of Ethelbert of Kent, was given 'with the counsel of witan', according to Bede[1], who may have read its prologue lost to us. While he expressly remarks that this written legislation was imitated from the Romans, the witena gemot was no novelty.

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[1]) *Codex diplom. aevi Saxon.*, here quoted as Ke for records dating after 975. Earlier charters are quoted from Bi(rch) *Cartular. Saxon.*

[2]) *Saxons in Engl.* II, ch. 6. Purlitz, *König und Witenagemot* (Diss. of Leipsic, 1892) generally follows Kemble, but treats independently the election and deposition of kings.

[3]) *Constitut. hist.* I, n. 51—8.

[4]) Freeman V, ch. 24 § 4; cf. below § 42.

[5]) *Peerage and pedigree* I 324.

5. [1]) II 5.

It therefore existed in heathen times, and the same venerable author adduces another instance from pagan Northumbria. These two archaic examples of the national gemot had their precursor most likely in that hypothetical assembly, without which the republican commonwealth of the continental forefathers of the English cannot be conceived; and what Tacitus tells us about early Germany seems indeed to survive in the functions of the assembly six hundred years later.[2] This power may be surely regarded as a remnant from the republican age, because young kingship was not likely to create it, and to bind its own hands. But refraining from any speculation on the prehistoric origin of the witena gemot, we only wish to point out that even that assembly of the Migration period need not necessarily have been democratic. It is true that an argument for such an assumption has been seen in Ethelbert's special protection, warranted 'when the king calls his people (*leode*) to himself'. The explanation of this paragraph is, however, not beyond doubt. It may refer to nothing but a military purpose, or if common council is included in the meaning, people may already then, as doubtless later on, signify the aristocracy representing the nation. If on the other hand the wider and original meaning belongs here to the word 'people', and if they meet for the purpose of a national council, we ought to set this early law apart from all the rest, as a remnant of those prehistoric times when all the freemen took part in the national assembly.

6. The Northumbrian assembly which adopted christianity, exhibits the royal priest of heathendom endowed with the first vote. His successor, the tribal bishop, may in this respect have simply stepped into his shoes, just as the pagan manor sanctuary was replaced by the thane's own church, just as some temples and sacrificial festivals were transmuted into chapels and christian gilds. But the change worked by the church on the national assembly

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[2]) Below § 53.

must have been so incisive that, even if we knew many heathen instances, we should certainly relegate all of them to the limbo of prehistory. For it was only with the art of writing down longer texts, that extensive legislation and the fixing of literary records, those two principal functions of the later witena gemot, became possible. Not only Bede connects Ethelbert's legislation with the Roman example, but also the heading of the laws, which was penned before the apostle of the English was called a saint, dates them in Augustine's lifetime. The churchmen, who henceforth had the first voice in the kings' counsels, had been trained in their ecclesiastical synods periodically to deliberate, to give judgment and to legislate in an assembly, to express their canons clearly in abstract terms, to reduce them to higher ethical motives, to arrange them in an orderly system, to write them down, and to preserve them in archives. They threw open to English legislators and record writers the intellectual treasures of the bible, of early christian fathers and decrees, of Roman and Frankish law. While the lay members of the national assembly owed their position mostly to noble birth, inherited wealth or military valour, the higher clergy were picked out partly on account of prominent gifts of mind, long experience in statesmanship, and altruistic views. At the same time they had learnt to revere and to serve in holy church an invisible institution, impersonal and not bound to narrow local or family interests; they, therefore, might easily become political teachers for the uneducated nobles, who up to then had been too liable to have regard only for the persons of their royal lord, their kin or their petty tribe. The metropole of Canterbury aimed from the first at an hierarchical union of all Britain; and this tendency began in ecclesiastical synods to exercise its influence long before Mercia and Wessex gained political supremacy over England. Secular rulers had to learn the very notion of a national state from the clergy.

7. Disregarding now those two assemblies mentioned above, we get the earliest authentic documents of witena

gemots from the last generation of the seventh century. Kent, Mercia, Sussex, Essex, and Wessex offer charters and laws of that time confirmed by the witan. The institution appears then firmly established in every heptarchic state[1], and this may serve as an argument for a longer previous development. It is for the period of just four hundred years before the Norman conquest that in the following lines an attempt will be made to sketch the national assembly. Christianity is not the only feature distinguishing it from the archaic gemot of the centuries before. The historic witan are also aristocratic from the first moment when we can clearly discern them. If at any time there had existed a primary assembly of all the freemen, it did certainly not survive in England up to a. D. 670. One hypothetical cause for its tendency to become more and more aristocratic has been often adduced: many a common peasant may have gladly shirked the duty to do the long journey to the meeting place, whereby his pecuniary and agrarian interests might suffer. But the social and economical development worked still more powerfully to the same effect. The poor freemen lost their independence to a personal lord or to the owner of the soil they cultivated, and if only he appeared in the assembly, they might see in him their spokesman; at least they ceased to be his equals and became unable to outvote him.

8. The third point which severs the historic witan from those of republican times is the crown, and especially the monarchical power solely to create nobility. Already under Ine we hear of the king's witan, the older notion of national counsellors being pushed to the background. Once there had existed a nobility perhaps older than, or at least not dependent on monarchy; it was based on descent alone, possibly from a mythical hero, whose merits the commonwealth thankfully remembered. We hear of these aristocrats by birth in two Kentish laws almost as

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[1]) About Northumbria above § 6, below § 56; about the Hwiccas and later Eastanglia below § 22 n. 10.

late as Ine's time. But under his reign and later on it is solely service done to the crown or to the royal household, though indeed not always to the king reigning at the time, that opens the way to the witena gemot.

II. 9. The names given to the national assembly may teach us something about its essence and history. Until the end of the tenth century[1] no native word in the singular number emerges designating it as one corporate body; even the loanword 'synod', borrowed from Latin in the seventh or eighth century, seems never to be used as the operating subject of an action. It is rather a word in the plural number, designating the members of the assembly, by which the notion of the motive power is usually expressed; words like 'senate'[2] or '(collected) wisdom' (*sapientia*[3]) are but rare exceptions. We meet with the same phenomenon of nomenclature in the legal history of Teutonic corporation generally. While among the laws, the majority distinctly profess to emanate from an assembly, the records expressly saying so are but few. Since their validity did not rest on the authority of the abstract institution, the corporate existence of which was but dimly felt, it generally sufficed to mention in the text of the charter the high position of the consenting classes and to append the names of witnesses, obliged by their crosses to stand up for the truth of the record. Wherever the counsel, consent, witness or license of several aristocrats[4] is in any way expressed, all scholars[5] agree that this was given in a witena gemot.

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[1]) *þis witena gemot; hæc synodus;* Ælfric *Grammat.*

[2]) *senatus* a. 864 Bi 509; cf. *Gesetze* II 195 s. v. — *Rædgift* occurs as a gloss to *senatus,* but not in a political or juristic text.

[3]) *Gesetze* II 189 s. v.

[4]) [Haddan and] Stubbs *Councils and eccles. doc.* III a. 774 sq. 777. 779 sq.

[5]) Kemble *Saxons* II 195; Stubbs *Counc.* p. 654. 659; a. 841 sq. 868. 973 Bi 437 sq. 518. 1293. Charters signed by 1—3 bishops, 2—5 earls are inscribed as 'witena gemot'; a. 842 sq. Bi 439. 443.

10. The word *witan*[1] remained the technical term for the national assembly from the seventh to the twelfth century. The primary meaning of *wita*[2] is 'one who knows'. This general sense and its derivation 'witness' are also found with continental Germans. Wordform and original meaning date, therefore, before the emigration. The technical sense 'member of the national assembly' occurs only in England. Still even this may possibly be older than, or at least independent of monarchy, since the word distinctly possessed a national and republican meaning when the composita 'people's witan[3], England-witan[4]' could be formed.[5]

In most cases, however, and as far back as the seventh century the witan are king's counsellors. (This qualification distinguishing them from local district witan often remains unexpressed.) It is only on the base of this meaning that

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[1]) *Gesetze* II 245 s. v. In charters since a. 838. 850. c. 855 Bi 421. 452. 558.

[2]) *gewita* shares with *wita* among many meanings also that of 'member of the national assembly'; Thorpe and Toller translate *weotum 7 gewcotan* by 'witan and witnesses'. Could it not mean: 'king's witan and (associate) co-witan?'

[3]) *þeodwitan* see *Gesetze* II 220; *leodwitan* a. 838 Sweet *Oldest texts* 436; *witan minre* or *þisse þeode* Ine Prol.; a. 825 Bi 386; *folcwita : senator* Toller *Diction.*; in Latin *populi* a. 774 Bi 213; *plebis* a. 833 Bi 410.

[4]) *Angolwitan* see *Gesetze* II 14; *Angolcynnes witan* Ann. Anglosax. 978. In Latin the members are *Albionis* (a. 959. 961 Bi 1009. 1073); *gentis Merciorum* a. 840 sq. Bi 430. 434.

[5]) There exist indeed three wider meanings of *witan* unconnected with monarchy and possibly forming the basis of the narrower sense 'national assembly', viz. 1. deciding superiors, doomsmen in the court of justice which must be assumed to have preceded kingship (*Gesetze* II 245. 701 n. 1a); 2. counsellors without relation to the commonwealth (counsellors of a bishop a. 822 Bi 308; 'bishops shall have distinguished witan in holy orders, with whom they can consult and who be their *gewitan*'; in Polity 10, about 1030, ed. Thorpe *Anc. laws* 428); 3. principals, elders, leaders (of a monastical convent; a. 825 Bi 386; not to be translated 'advocates' or 'witnesses'!). But even if they are archaic, it does not follow that their derived limitation was so too.

another which occurs as early as in Beowulf[6] could arise, namely, 'nobleman depending on the royal court, without the notion of crown counsel'. With Ine and in most instances *wita* combines both these meanings: king's counsellor and distinguished nobleman.

11. Though instead of *witan* the expression 'the wise men', in a sense synonymous or nearly akin, sometimes occurs[1], and though the Latinists, seduced by etymology, translate *witan* by *sapientes*[2], while conversely the Anglo-Saxons retranslate Bede's *sapientes* by *witan*, the original conception of extraordinary knowledge or eminent wisdom has completely vanished from the word *witan*[3] when it designates the national assembly: just as Latin *nobilis* lost the root sense of one *qui novit*. In order to render the sense of Bede's *prudentes* the Anglo-Saxon must put the two words wise witan.

12. Another class of names for the national assembly lays stress on counsel alone, and presupposes a monarchy to which counsel is to be given. Bede's king's counsellors are translated by *þeahteras*[1]; but neither this word nor any of the stem *þeaht* became technical for English[2] crown councillors, though legal language speaks of the witan's *geþeaht(ung)*. The composita formed from *ræd* (counsel[3])

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[6]) 157. 779. 937.

11. [1]) King, archbishop and other *wise menn* Ann. Anglosax. 742; *þa wise menn* (ib. 1052 E. 1140) are mediators experienced in legal and political affairs, witan among them. *Wisuste 7 ealde men* a. 995 are not witan.

[2]) Bede II 5. 13; a. 810. 812. 838. 901 Bi 341. 419. 421. 595; *sapientissimi* a. 824 Bi 379. The witan of hundred and county court are also translated by *sapientes*; see *Gesetze* s. v.; a. 1072, Engl. hist. rev. 1912, 720; a. 1178 *consilium sapientium regni* Gesta Henr. I 207. *Prudentes* instead of *sapientes* Beda II 9, both a. 844 Bi 445.

[3]) Alfred translates *decem principes* of Carthage in Orosius by *X ieldstena wietena; wita* means 'prince' without any shade of counsel or wisdom in many instances with Toller.

12. [1]) II 13; *consiliarius papae* V 19 : *wita 7 geþealtere.*

[2]) *rædþealtere : senator; geþealt*: assembly in bible and homilies; *(ge)þealtend, -tere* with Toller.

[3]) Also 'those with whom the king *rædde*' VI Æthelstan 12, 1.

do not appear before the tenth century[4], and *rædesmenn*[5] seems a loan from old Norse. Where Latin charters of the ninth century speak of councillors[6], their writers need not have had in mind Anglo-Saxon derivations from the two roots just mentioned, but simply *witan*.

13. Before the statesmen entered the national council they must have individually filled a distinguished position. From a genetic point of view, the names describing this rank seem therefore the earliest of all, especially those which, founded on old age and its long experience, stand next to nature. But in historic times no vestige of the sense of old age survives in the words 'alderman'[1] or 'the eldest'[2]: they signify a superior or the chief men, by no means the most aged. Anglo-Latinists influenced by Roman reminiscences, call the witan *maiores natu*[3], senate[4], senators[5], *seniores*[6], while conversely bishop Waerferth[7] translates St. Gregory's *seniores* by *witan*.

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[4]) *rædboran* see *Gesetze* II s. v.; a. 970 Bi 1267; *rædgifan* see *Gesetze* II s. v.; a. 1018 c. 1020 Ke[mble] *735. 1327. 1346; Anglo-Saxon translation to Ke 715. The king's *rædbora* (a. 970 Bi 1267), *runwita and rædbora* (Beowulf 1326), *rædgifa* (Ann. Anglosaxon. 1051) in the singular is the chief councillor, the head of the administration. *Rædwita* in poetry is not technical.

[5]) A. 1032 Ke 745; Ann. Anglosax. 1039. In the singular the word can signify 'administrator, steward'.

[6]) *consiliarii, consiliatores* a. 825. 857 Bi 390. 492.

13. [1]) *seniores populi* in Matthæus is glossed by *ældo vel vuto*. Also *frod* means 'wise' and 'old'. Bede's *alius optimatum* II 13 is translated by *wita and ealdormann*.

[2]) *þa ieldstan*; but *þa ieldran* never means witan.

[3]) (From Caesar *Bell. Gall.* IV 11. 13?) a. 811 Bi 335; Flor. Wig. a. 977; below § 19, n. 7.

[4]) a. 864 Bi 509.

[5]) a. 688 Bi *71; a. 786 legatine synod; a. 957. 961 Bi 1009. 1073. In some charters, however, *senator* merely translates *ealdorman*: a. 847. 932 Bi 451. 687 sq.

[6]) Beda III 5; a. 671. 774 Bi *26. 213; a. 786 legatine synod; a. 866 Bi 513 sq. It is not necessary to suppose the influence of French *seigneur*.

[7]) Ed. Hecht p. 9.

14. Other names of the witan point to their noble descent[1] or their riches[2], and — what was then almost identical — their power or their political dignity. These names signify verbally the distinguished class[3], the princes[4], the magistrates[5], judges[6], administrators[7], and earls.[8] An especially warlike sound rings in the name 'heroical men[9]', possibly an equivalent for the Anglo-Saxon word meaning the manly flower of the people.[10] Military duties, however, used to be combined also with civil office described in the above names. Very often several of the designations, in an inexhaustible mass of possible variations, serve for the one notion of witan. The clergy, though sometimes included, are as a rule separately mentioned.

15. The compound word *witena gemot*, with all modern historians the technical term for the national assembly of any Anglo-Saxon state, does not occur in laws or charters. One charter speaks of 'witan in the *gemot*[1]', clearly betraying the want of a comfortable name. The compositum had designated foreign assemblies[2] long before; but

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[1]) *þa eadigan, nobiles.*

[2]) *ricce men* Ann. Anglosax. 963. 1140.

[3]) *primi, primores, primates* a. 678 c. 692 Bi *41 sq.; cf. Taciti *Hist.* IV 14; *optimates, magnates, proceres; patricii* a. 686 Bi 67; cf. below § 35.

[4]) *principes*; the version of the laws has *principes* for *woruldwitan*; see *Gesetze* II 250.

[5]) *dignitates* a. 745. 798. 811 Bi 170. 291. 332; *magistratus* a. 749. 848 Bi 178. 454.

[6]) *iudices* a. 705 Bi 115; *praetores* a. 816 sq. Bi 357. 360.

[7]) *procuratores patriae* below § 38 n. 2.

[8]) *caldormen, duces, satellites; satrapae* c. a. 706. 766 Bi 91. 200; *satrapes Cantuariorum* include the archbishop a. 809 Bi 328; *comites* c. a. 687. 714. c. 730 Bi 89. 132. 145. 155.

[9]) *heroici viri* a. 930. 948. 956 sqq. Bi 1344. 868. 945. 979. 988. 1001. 1043 sq.; *heroides* a. 1012 Ke 720.

[10]) *duguð* a. 896. c. 974 Bi 574. 1296.

15. [1]) a. 896 Bi 574.

[2]) Bede's *conventus seniorum* is so translated; ed. Miller 162; it occurs also in the Anglo-Saxon bible. Cf.: 'They had daily their *witena-gemot* and the *senatores* were delegated to it, i. e. the *þeodwitan*', quoted by Toller 1243.

only almost as late as a. D. 1000, it begins to bear the technical sense for the English institution. By the middle of the eleventh century it is used freely in the Anglo-Saxon annals[3], and constitutes the official name, though it retains several other meanings[4] even in the twelfth century. *Gemot*[5] alone and four synonyms[6], including Latin *conventus*[7], though originally meaning gathering generally, often bear the restricted sense of the national assembly. *Micel gemot*, i. e. great assembly, can designate the national council[8], but other institutions as well.[9] Some Latin expressions, verbally meaning public or the people's gathering or the nation at large[10], may possibly be translations of a hypothetical *folcgemot*[11], which, however, in the sense of national assembly occurs only in an unauthentic text; at any rate we must not deduce from these expressions, which may be influenced by the phraseology of ecclesiastical synods, a democratic character for

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[3]) A. 1048. 1050. 1052. 1055; *gewitene mot* under a. 675 is a still later interpolation.

[4]) *gewitane mot*: county court; Ann. Anglosax. 1124.

[5]) A judicial or political purpose is frequently understood; see *Gesetze* II 94; Ann. Anglosax. 1050. Bede's *initum est consilium* by the Britons before 449 is translated by *gesomnedon gemot*.

[6]) *gegaderung* Homily ab. 1030 in Wulfstan ed. Napier 272; cf. *gegaderian* in *Gesetze* II 91; *gadering* Ann. Anglosax. 1137; *ymbcyme* Wihtræd Prol.; *samnung* Ine Prol.; cf. *Gesetze* II 737. 97: *gesamnian*. The Anglo-Saxon version of Bede V 19, p. 639 has *to þam sinoðe laðian*; at other places this word and *(ge)laðung* seem not to refer to the national assembly.

[7]) A. 788 Bi 254; a. 998 Ke 700.

[8]) Ann. Anglosax. 977. 1015. 1020. 1047. 1065. Cf. below § 63.

[9]) County court c. a. 977 Bi 1262; foreign *consilium* Matth. 26, 4; cf. *Gesetze* II 146.

[10]) *Publicus conventus* a. 888 Bi 557 (used by Charles the Great for the assembly of the Saxons; *Cap. de part. Sax.* I 70, c. 34); *tota plebis (populi) generalitas* a. 931. 934 Bi 675. 702; *præsentia populationis* a. 725 Bi *142; *populus terrae* mentioned behind or before the witan (a. 786 legatine synod; a. 938 Bi *727); *gens et optimates* a. 835 Bi 413; *populus, seniores, primates* a. 938 Bi *727; *optimates aliique fideles* a. 1001 Ke 705; similarly a. 1018 Ke *735; *duguð folces* above § 14, n. 10.

[11]) *Gesetze* II 73.

the witan. Whether *mæðl* or *þing*, i. e. assembly and court of law, words occuring in the Kentish laws[12], can signify also witena gemot, remains doubtful. Cnut is the first to speak of 'my witan's *ræd*[13]', meaning the royal councilboard, the unified body of state counsellors; and the annalist soon after[14] calls the witena gemot: the king's *ræd*. The indefinite *man*, a substitute for the passive mood wanting in Anglo-Saxon, very often hides the subject of a governmental action, and at least in one place[15] it must mean the witena gemot. The words meaning court, colloquy, plea[16] belong to the Norman period.

16. A very frequent name for the national assembly is Latin *synodus*[1], two sounds of which the Anglo-Saxon changed but slightly for his loanword.[2] Continental Germans also borrowed it for their secular assemblies. The qualification of 'great[3] synod' does not alter the sense. Another exact synonym is *concilium*[4] or 'synodal meeting[5]'. Even where synod or council is called holy[6], a merely ecclesiastical character need not be meant. Where the Anglo-Saxon wants to avoid ambiguity in designating a clerical synod, he must qualify it as the bishops' or priestly synod.[7]

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[12]) In all the other places a foreign assembly is meant.

[13]) II Cnut Prol.

[14]) A. 1048 i. e. 1051.

[15]) Ann. Anglosax. 1037.

[16]) *hiered, curia, colloquium, parliamentum* (Adams *Origin Engl. constit.* 202), *placitum.*

16. [1]) Bede II 2. III 7. IV 28. V 19; *witan-* is translated by *synodalis*; *Gesetze* II 198. 207.

[2]) *seonoð* a. 798 Bi 289; Ann. Anglosax. 742; Alfred; version of Bede; poetry of the eighth century.

[3]) *micel sinoð* with Æthelstan and Eadmund; it does not follow that *sinoð* alone is ever equivalent to *gemot* generally.

[4]) IV Æthelstan 6. VI 10; *synodale concilium* a. 794. 810 Bi 269. 445; *conciliabulum* a. 785. 788. c. 800 Bi 247. 254. 201.

[5]) *sionoðlic gemot* a. 825 Bi 386; *conventus synodalis* VI Æthelred 40, 2.

[6]) *sanctum concilium* a. 794 Bi 269; *sancta synodus* a. 810 Bi 445.

[7]) *bisceopseonoð* Toller; *sancta sacerdotalis concilii synodus* a. 736 Bi 156 see below § 19.

III. 17. The ambiguity of names discloses the vagueness of the notion itself. Even Alfred[1] did not discern between the ecclesiastical council, common to Christian countries, and the secular national assembly legislating on English criminal law. Such a confusion in the mind of the learned and thoughtful legislator was possible only, because church and state were almost indissolubly intertwined.[2] Synod and gemot sometimes bear the same name, meet at the same place[3], are convened and presided over by the king and frequented by bishops and nobles. The synodal canons do not refrain from encroaching upon political matters and secular justice.[4] Every law that consists of a somewhat longer set of paragraphs is sure on the other hand to concern religion or clerical interests. But while in legislation[5] the dividing line between church and state has been drawn by recent editors with tolerable certainty, it is difficult indeed to distinguish whether a record belongs to a synod or a witena gemot. Language, diplomatic form, or the collection where it is preserved to us, gives us but rarely a clue. A number of documents have correctly appeared as well among ecclesiastical councils as among secular charters. Kemble[6] thought both classes inseparable. Stubbs[7] ascribes many records either to witenagemot, or synod[8], or to both[9], or to an

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[1]) *Gesetze, Einl.* 49, 7 sq.

[2]) Ib. II 542: 'Kirchenstaatsrecht'; cf. below § 54.

[3]) Even after the Norman conquest; Freeman *Nor. con.* IV (1876) 341. 387. After a lawsuit on land on the 6th Oct. 803 followed a synod on the 12th.

[4]) The legatine synod of 786 admonishes king and lay nobles to just secular government and forbids them elect a bastard as king. It also prohibits *episcopis in conciliis suis secularia iudicare*; *Gesetze* II 439, n. 18a—c.

[5]) 'Synods were quasi merged into witenagemots'; Böhmer, *Kirche u. Staat* 45. 72.

[6]) *Cod. diplom.* I, p. CVII.

[7]) *Councils* III.

[8]) A. 701, p. 250; a. 793. 799. 804 sq. 824 Bi *267. 293. 313. 322. 377.

[9]) A. 816 Bi 358; c. a. 820 a secular compact between Canterbury and the king of Mercia mentioned in Bi 384.

assembly[10] neutral between both. The latest editor of the charters inscribes as products of a witena gemot only those which either expressly profess to emanate from such, or are dated on a certain day, and name the place at which they were given. But a great many more originated in those assemblies; altogether about three hundred national assemblies can still now be quoted, double the number of those collected by Kemble.[11]

18. There are three criteria which authorize us to assume a witena gemot: the secular object, laymen's cooperation, and the date. In the first place the assembly is sometimes[1] described as satisfying secular needs or maintaining the stability of the kingdom.[2] Furthermore by far the majority of all the records are 'books' i. e. charters commuting folcland into bookland, or exempting land from political duties[3], or conveying royal land.[4] Others settle the litigation of the king or the highest nobility. All these affairs belonged to the competence of the witena gemot. Secondly we see a national assembly at work, where lay nobles[5] take an active part in the

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[10]) A. 814 Bi 343. A gemot claiming synodal authority p. 652; c a. 861 Bi 502.

[11]) *Saxons* II 241.

18. [1]) A. 824 sq. 838 Bi 421. 378. 384.

[2]) Ecclesiastical objects turning up besides form no counter-argument.

[3]) An exemption of bookland bought from the king, confirmed by *duces seu principes,* and witnessed by laymen cannot be a 'strictly ecclesiastical synod'; c. a. 800 Bi 201.

[4]) The record c. a. 740 Bi 165, signed by bishops, mentioning no layman, is called witena gemot by Stubbs. A. 788 Bi 254 is a record confirming a royal gift to a thegn and therefore not synodal, though witnessed by bishops only.

[5]) Though the archbishop begins with the *Credo, seniores* settle a litigation between king and archbishop a. 798 Bi 291. Though the archbishop sues an abbot before bishops and abbots, lay affairs are also treated, *seniores* are mentioned in the text, the whole 'synod' — i. e. laymen included — examines, decides and consents, and 14 noblemen sign in a. 824 Bi 378. Though the parties are clerical and the archbishop helps to convene the assembly, its members are *dignitates,* and

proceedings or witness the record by individually signing it[6], or where at least the consent of their class is expressly mentioned in the text.[7] Thirdly whenever we meet more than, say, a dozen bishops or magnates with the king in his vill or huntingseat, we cannot but suppose that a previous summons has called them there, since without preparations a mere village would have been unable to feed the royal court and noble guests, each with a couple of persons as retinue and with several horses. Lastly to a witena gemot — though in the text there may be nothing affording a sure token of such — ought to be referred all those records that bear the same year and the identical witnesses[8] as others, which by critical method have been safely attributed to a national assembly.[9]

19. To an ecclesiastical synod we ought to assign those documents, which were given in an assembly characterized

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the object is an exchange of land a. 798 Bi 291. Though the archbishops preside, a litigation is settled *mediante rege cum principibus* a. 789 Bi 256. Though in a *conventus famulorum Dei*, it is the king who gives away land, confirmed by secular magnates in a. 793 Bi 265. Though the assembly is called *sanctum concilium*, ealdormen decide a litigation about land against a layman a. 794 Bi 269; and to *sancta synodus* appeals a party from the archbishop, meaning, therefore, a witena gemot a. 810 Bi 445.

[6]) The absence of lay signatures is no counterargument; Kemble, *Saxons* II 203. — Stubbs called the assembly at Clovesho in 794 a synod, but did not know the list of 12 *duces* witnessing with Bi 274.

[7]) At Streoneshealh (Whitby) the question is ecclesiastical, but discussed and decided by the king, and laymen agree to it; a. 662, Bede III 26. Cf. a. 780 Bi 1334 (place mentioned); a. 867 Bi 201; a. 868 (dated a. 948) Bi 873.

[8]) The record Bi 876 belongs to the eastergemot a. 949; so do on account of the identity of witnesses Bi 875. 877. 879 sq. 1345. Likewise in a. 948 the eight pieces Bi 862. 864 sq. 868—71 show almost all the bishops and ealdormen as witnesses. In a. 953 (and 955) the origin of Bi 899 sq. (and 903. 905) is proved by 13 or 14 identical names.

[9]) Forgers sometimes transplanted the witnesses' lists of genuine texts into their fabrications. It is, therefore, advisable, where originals are wanting, to draw conclusions from copies only if these come from different churches.

as pontifical[1] or sacerdotal, secondly those which mention churchmen only in the middle of the text as the enacting power, and at the bottom as consenting witnesses, and thirdly those which concern clerical affairs only.[2] Among the latter is to be included the synodal confirmation of an act of the secular power[3], such as the abolishment of the archbishopric of Lichfield[4], or the amicable arbitration between ecclesiastics, though their quarrel turns on land[5] or landrent.[6] The assembly may be convened and even presided over by the king[7]; lay nobles may be passively present[8], and the secular power may even confirm the decrees: all this would not militate against the character of a synod. Though, for example, Ine of Wessex has been consulted on the convening of an assembly, though he asks its vote, and sends off to Canterbury Winfrid-Boniface as its messenger, whose success laymen applaud, still this assembly must be regarded as a synod, because God's servants alone are its members and the proceeding turns on a dispute concerning priestly degrees.[9] Again the piece, which in all the legal collections has been edited as Edmund's first law, ought to be entered as a synod. For, though the king has summoned the assembly at easter to London — place and time usual for witena gemots —, and has called laymen to it, bishops only are mentioned as the factors consulting and decreeing; they alone address the people in the first person plural, quote canonical law,

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[1]) A. 789. 824 Bi 256. 378 sq.; see above § 16. The record c. a. 943 Bi 790 belongs to a synod expressly distinguished from king and people.

[2]) A. 673 council of Hertford; a. 803 Bi 312 against lay abbots.

[3]) A. 839 (Stubbs III 624) confirmation of a witena gemot.

[4]) a. 803 Bi 310.

[5]) a. 789 Bi 256.

[6]) *pastus* [i. e. *feorm*, not pasturage] a. 803 Bi 309. That sometimes a synod judged secular affairs as well, is prohibited as an abuse by the papal legate in 786; Alcuin ed. Mon. Germ., *Epist.* IV 23.

[7]) Kings are at the synod of Hæthfeld a. 680. Rome enjoined the presence of *reges maioresque natu Saxoniae.*

[8]) A. 742. 747 sq. 816. Bi 358.

[9]) Willibald in *Mon. Germ.* II 338.

threaten ecclesiastical punishment and deal only with clerical matter.

20. There are assemblies mixed or intermediate between lay and clerical. Some of them have been recognised as such in their own times. In the assembly on the Nidd in 705, after the representative of the lay power had spoken, 'the bishops separately from the others began to consult among themselves': a synod is branching off from the gemot. Again, from amongst the witan a clerical committee under the archbishop may be formed in order to decide by clerical oathhelpers a litigation on land between churches; its judgment, however, is afterwards signed by lay nobles. This assembly bears the accurate description *pontificale et sinodale conciliabulum*, i. e., according to Stubbs's correct translation, synod and witena gemot.[1] The decrees of such an assembly bear a name characterising their origin from church and state, viz. *kanonica et synodalia*.[2] This doublesidedness seems also to induce the king to sign a charter in two places, at the head of the bishops as well as of the princes.[3] It would be too modern to see with Kemble two houses of the assembly in these cases; nor must the fact be hidden that the clergy belonged to both sides.

Ecclesiastical decrees, in order to gain validity among laymen, required the confirmation by the witena gemot[4] or the king alone.[5]

21. Not every royal document comes from an assembly. A small permanent court council[1] must necessarily be

20. [1]) A. 824 Bi 378 sq.; Beonna, formerly *electus* is *episcopus* in n. 379.
[2]) A. 810. 844 Bi 445.
[3]) A. 801 Bi 201 B.
[4]) See above § 19 about I Edmund, below § 56.
[5]) The king subscribes to a papal privilege c. a. 701; Beda *Hist. abb.* 12.

21. [1]) A homilist of the 11th cent., admonishing the king often to meditate wisdom with *witan*, seems rather to send him to the council chamber than to lay stress on frequent witena gemots; *Polity* 2 in Thorpe's *Anc. laws* 423.

discerned from the large number of bishops and magnates, who had purposely to be summoned for a future term and met scarcely oftener than three times a year. This council, most likely guided by the king's bishop or 'handpriest'[2], issued all those governmental writs[3] which appear from Ethelred II.'s time. As the king did not write himself, and these records also bear as a rule a few witnesses' names, they are not private royal letters. Other court council documents[4] may possibly be those issued under the king's name, which betray no trace of an assembly and show a very small[5] list of witnesses (without the possibility of its having been curtailed by some lazy copyist), and are undated. If on the other hand place and day are given, and especially if they coincide with a favourite assembly locality and with christmas, easter or whitsuntide, the presumption speaks rather for the origin of such documents in a witena gemot.[6]

22. In the heptarchic period the witan from several states sometimes form one gemot, for instance those of Mercia and Kent[1], of Mercia, Kent and Wessex[2], of Wessex and Essex.[3]

The king of Kent and the underking of the Hwiccas[4] continue with their own witan to give charters, after having fallen under Mercia's supremacy, which they duly acknowledge. Likewise, when Wessex had subdued all England, and its king could 'gather his witan from far

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[2]) Harold I. at Oxford in 1039/40 was accompanied by one bishop. Stigand was in 1051 the king's handpriest and counsellor.

[3]) *Gesetze* II s. v. *Breve* 1. 2; *Grafschaftsgericht* 5 a.

[4]) A marriage compact c. a. 1018 Ke 732, witnessed by the king, archbishop, a sheriff and others; a record of a lawsuit in Alfred's court a. 901 × 24 Bi 591, witnessed by six untitled laymen.

[5]) Several abbots among them offer a strong proof for a witena gemot.

[6]) A. 824. 956. 968. 973, Bi 377. 966. 1219 a. 1293.

22. [1]) c. a. 756 Bi 181.

[2]) a. 705 Bi 115.

[3]) A. 758. 722 Bi *327 208

[4]) a. 680 Bi 51

and near, from Westsaxons, Mercians, Danes, and Angles'[5], the former states did not cease to have separate witena gemots. The Mercian underking convenes his gemot with the king's license in 896 and about 950[6]; the witan of Mercia and those of Wessex meet in 901[7]; there are Kentish witena gemots in 809, 842[8], and under Ethelstan.[9] The East Anglian witan renewed in the tenth century the so-called laws of Eadward-Guthrum, and in 1004[10] agreed separately to pay tribute to the Danes. The Denalagu with her independent courts of law received from Edgar[11] the privilege of particular legislation. The witan of Northumbria in perfect autonomy deposed their earl against the wish of central government as late as 1065.[12] Provincial witena gemots lived on as long as the national assembly, and transferred their name to county courts of the Norman age.[13]

IV. 23. From the time of Ine the witan belonged to the aristocratic *élite* created by monarchy. The king, generally indeed advised by the existing nobility[1], conferred prelatures and ealdormanries, with both of which a seat in the national assembly was legally or practically connected. Members of the royal family, ladies not excepted, were present at many gemots. The king alone raised a man to the position of a gesith, a thane, a provincial or local reeve, a court officer or a royal chaplain, one of which titles seems to have been the indispensable qualification for a vote. Arbitrarily[2] perhaps, he chose those

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[5]) a. 997 Ke 704.

[6]) Bi 574. 1063.

[7]) Bi 595.

[8]) Bi 328. 439, possibly also a. 875. 898 Bi 539. 576.

[9]) *Gesetze* III As; cf. Chadwick *Anglo-S. instit.* 314.

[10]) Ann. Anglosax.

[11]) *Gesetze* IV Eg. 2, 1 sq.

[12]) Ann. Anglosax.

[13]) Ann. Anglosax. a. 1124: Leicestershire *gewitenemot.*

23. [1]) Below § 56 sq.

[2]) About a. 1114 Quadripartitus praises Cnut that he *regnorum sapientiam meritorum potius quam personarum estimatione congrega*[*vit*];

who, for one time only or for life, were to be summoned[3] from among the thanes' class, which was the most numerous among the witan and which never appeared in full strength, though perhaps entitled to do so. The king or his predecessors, not, however, without the witan's consent, had bestowed bookland and privileges on the witan of this period, or their predecessors and ancestors, and had thus brought them under the special jurisdiction of the crown. As no periodicity of the assembly was fixed, the king determined when and where it was to meet[4], for the most part choosing places under his immediate control[5]; he presided, spoke first, put his questions, proposed his bills, and finally dismissed[6] the witan. Among the names of the witan mentioned above[7], the greater part lays more stress on their dependence on the king[8] than on their national duty, and the latter is no longer felt to be distinct from the former.[9]

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in *Gesetze* 532. Though the author may have invented the fact without any positive knowledge, he clearly considered the monarch able to select the witan whom he thought worthy. — Another place, where Alfred (with Asser 106 ed. Stevenson 93) addresses the *sapientes* who owe their position to his gift, concerns the witan presiding over courts of law, not members of the national assembly. Æthelstan demanded a peace warrant to be given at Thundersfield 'before the bishops and the witan whom he had nominated himself': a special commission, not the assembly at large is meant. If the nomination had been regularly applied to every gemot, it would not have been mentioned.

[3]) Below § 46. 53.

[4]) A. 798 Bi 291. The underking *Mercna weotan gebeon* a. 896 Bi 574; *Gesetze* II 737, n. 5 a; VI Æthelstan 10; I Eadmund Prol.; Ann. Anglosax. a. 675. 694 (proving the custom of the eleventh century, when these annals were interpolated). 1010. 1051, 1. Sept.; a. 997 Ke 704. The source from which the summons issues is so self evident that the king need not be mentioned; Eddi a. 680; Ann. Agsax. 1010. 1055.

[5]) See below § 45.

[6]) Henry I. dismisses even the ecclesiastical synod in 1129; Ann. Anglosax.

[7]) § 10.

[8]) *Gesetze* II 737, n. 6 b.

[9]) *regis proceres* and *Merciorum optimates* are synonyms in a. 840 Bi 430; *mei fideles satrapes* are represented by six bishops in a. 988 Ke 662.

24. The influence of the king, or at least of kingship, on the constitution of the assembly seems, therefore, to have been immense. But on the other hand he was elected by the witan, and might before the election, though against the advice of the church[1], have given them promises in addition to the coronation oath. He could not depose the prelates or ealdormen, who held their office for life, nor indeed the hereditary thanes. Autonomous magistracy, a remnant from republican times, was but gradually transmuted into royal office. At any rate, the king had to get on with the highest statesmen appointed by his predecessor, though possibly disliked by him, until death made a post vacant that he could fill with a relation or a favourite[2], not, however, without having a certain regard to the wishes of the aristocracy. Furthermore, the prelates felt themselves as the representatives of their diocese and of holy church, which had at least consented to their election; the ealdormen protected the interest of their shire, and all the witan promoted the profit of the family they sprang from and of the land they owned. In the last Anglo-Saxon century a few houses cherished a customary expectancy, and almost possessed a hereditary claim to the highest posts in the state.

The king's witan, therefore, never sank into mere subservient creatures of the royal court[3], and during those periods — frequent enough — when a weak prince bore the crown, the word 'king' in their name meant nothing else than state or commonwealth. And now when the king died and the position of his court officers ended, the witan began to fulfil their most important duty in electing his successor. The national assembly herewith showed its own constitutional basis independent from monarchy; and

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24. [1]) Below § 49. See *Gesetze* II 556: *Königstreue* 5a; 562: *Krönungseid.*

[2]) Æðelheah and Cuðred occur first as *pedissequi* (i. e. *gesiðas*), later on as *duces.*

[3]) If the king nominated untitled witan, would they have ventured to outvote the old aristocracy?

at least some members, most likely bishops and ealdormen, must have possessed the generally recognised right to constitute it.

25. King and witan are the two factors of government; if the Danes could only extirpate those two, the state would lie powerless at their feet.[1] Administrative decrees or permanent general laws given by the witan require royal power to transmit them to the shire.[2] The assembly is so closely united with the crown, that the king speaks in the name of both in the first person plural[3], which must not be explained as a pluralis maiestatis.[4] If he begins his law with the words 'I and all of us'[5], or threatens evildoers 'with the loss of the friendship of all of us'[6], he speaks but as a *primus inter pares*. Generally, however, he stands apart from, or rather towers above the witan, when he thanks them for political assistance, assures them of his grace, admonishes them to further reform, or desires them to book lands to himself.

26. Dissensions between king and nobles may be as old as English history. But while the aristocracy often enough deposed or killed their king or even temporarily destroyed monarchy[1], we do not hear of dynasts forming an assembly, that would govern apart from or against the crown.[2] Nor is any case of constitutional opposition recorded.[3] No law is directed against the king's wishes; no witena gemot, except that which met to depose him, is

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25. [1]) Ann. Anglosax. 1002.

[2]) III Æthelstan 1.

[3]) An archbishop also changes from singular to plural when he wants to include witan; Stevenson *Crawford char.* 110.

[4]) This occurs, however, already in early charters, but in the possessive pronoun only: *anno regni nostri.*

[5]) *Gesetze* II 737, n. 3.

[6]) II Eadward 5, 1; II Æthelstan 5, 2.

26. [1]) Below § 50 sq.

[2]) Godwin and Harold govern through the king, not at the witan's head besides him.

[3]) See below § 68.

convened against his will. When it operates by itself, booking land to the king[4], it stands of course practically under his influence. In his absence a gemot in 1012 decrees Danegeld to be paid, and in 1016 an army to be collected. If, on the other hand, in one of Ethelred's laws, and in one manuscript of another, his name does not appear, the king's person and the crown are nevertheless not disregarded; the omission, therefore, must either be a casual one or the word witan comprises here the king as well.[5] Gemots without a king are those which depose him, or after his expulsion recall him, or after his death elect his successor. Not long after the zenith of Westsaxon monarchy had been gained, when successions were disputed and minors became kings, the ruling power fell into the hands of the aristocracy. A charter of Ethelred II.[6] confesses, that the government of the kingdom was led by bishops and witan. As a rule, however, the form of the Anglo-Saxon monarchy may be described as monarchy limited by the witan's counsel. This form appeared in the eighth century to the poet of Beowulf[7] as the ideal of lawful and just government. The greatest king of the Anglo-Saxons introduced his legislation with an express profession of the witan's consent.[8]

27. Modern investigators have invented the problem, whether during the periods of really governing kings the vote given by the witan was deliberative only or deciding also. This question seems preposterous, since the distinction did not altogether enter an Anglo-Saxon's mind; and possibly there was no voting at all. It is true that the witan's cooperation is expressed in four different ways. The weakest import lies in words meaning knowledge or witness only[1];

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26. [4]) C. a. 902 Bi 605.
[5]) *Gesetze* II s. v. *Gesetze* 12 e. f. 15b.
[6]) A. 994 Ke 278.
[7]) V. 1099.
[8]) Below § 60.

27. [1]) *attestatio* a. 973 Bi 1293; *testimonium* a. 824 Bi 377; c. a. 1022. 1033 Ke 736. 749; *scientia* a. 745 Bi 170.

counsel or suggestion[2] conveys a stronger sense; confirmation or permission[3] may signify a still higher degree of power, while in the last place 'decree or command'[4], if verbally understood, would reduce the king to a mere executive organ of the witan. But very often two of those words appear combined which are not synonyms[5], but signify a very different degree of strength.[6] This fact suffices to warn us not[7] to draw too nice conclusions from those charter forms.

They seem simply to be equivalent to the colourless statement, which also occurs, that the witan were acting together[8], or even were only present[9] with the king. Likewise a great variety of words describes the identical

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[2]) *consilium* a. 604 Bi *3; a. 981. c. 990. 998. c. 1040. 1062 Ke 629. 713. *701. *761. 813; a. 1059 Earle *Landchar.* 300; *consultus* a. 823 Bi 410; *ræd* a. 1050 Ke *791; *precatus* a. 999 Ke 703; *ammonitio* a. 997 Ke 698.

[3]) *consensus* a. 679. 802. 857. 864. 948. 956 sqq. Bi 45. 492. 506. 509. 868. 945. 1043 sq.; c. a. 990. 998. 1002. 1035. 1050 Ke 712. 662. 1295. *747. *735. 792; *auctoritas* c. a. 964 Bi 1158; *licentia* a. 838. 864. 866. 869 Bi 419. 509. 513 sq. 525; a. 994. 1001 Ke 686. 705; *gepafung* a. 1061 Ke 1341; *leafe.*

[4]) *decretum* a. 961. 967 Bi 1063. 1199; a. 993 Ke 1312; *præcipientibus* c. a. 995 Ke 1312.

[5]) such as *gepeahte and ræde* a. 1061 Ke 1341; *licentia et permissione* c. 769 Bi 205; *consensu ac licentia* a. 764. 767. 770. 833. 853. 863. 867 Bi 195. 202. 204. 411. 467. *508. 516; *gepafunge 7 leafe* a. 864 Bi 510.

[6]) *licentia et testimonio* a. 841 Bi 434; *consensu et testimonio* a. 796 Bi 281; *consilio et decreto* a. 1018 Ke *735; *consilio et consensu* c. 762. 955 Bi 194. 906; a. 977, Earle 295; *consensu pontificum et consultu cunctorum* governors a. 994 Ke 278; *consilio et testimonio* a. 838 Bi 423; *consilio et confirmatione* a. 688 Bi *71; *ræd 7 ærndung* [mandatum] is to be equivalent to *consilium* a. 1068 in *Engl. hist. rev.* 1896, 740 sq.

[7]) With Maitland *Domesday* 247; I agree with Luchaire *Hist. institt. monarch.* I 245.

[8]) VI Æthelstan 11; *cum* (*coram* a. 747 Bi 175) *optimatibus* a. 742 Bi 162; a. 984 Ke 641; *cum principibus* a. 789 Bi 256; *cum . . . gradibus donarerat* a. 811 Bi 332.

[9]) *in præsentia* a. 675 Bi 35.

action of the subscribers at the bottom of charters.[10] These persons are said to witness, confirm or permit them.[11] We must not look for different meanings behind this pedantic verbosity. Where only the bishops[12], not the laymen are said to consent, the hierarchical scribe no doubt wants to surround the clergy with higher authority; nor must we suspect that those subscribers, whose names are not accompanied by an expression of consent[13], desired only to witness the genuineness of the charter without confirming its contents. A history of the consent forms has indeed been attempted, and an ingenious scholar has contended, that the confirmation by witan occurred most frequently in the middle period of the Anglo-Saxon age, about the ninth century. But it is distinctly mentioned as a well known institution as early as Bede, and in the middle of many original charter texts at least since 679.[14] While the actual partition of power between king and witan must have immensely differed, when on the one hand an Alfred governed, and on the other a minor or a weakling nominally bore the crown, the ebb and flow of aristocratic influence can in the main scarcely be gauged by charter

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[10]) Independent confirmation: a. 693. 780. 808. 867 sq. 958 Bi 85. 1334. 201. 326. 873. 1041; a. 1002. 1015. c. 1023 Ke 1296. 1310. 1324.

[11]) *assensum præbentibus* a. 1003 Ke 1299; *concessi, favi, adquievi, conclusi* a. 956 Bi 926; *non renui* c. a. 977. 987 Ke 1276. 657; *confirmantibus* a. 1043 Ke 767; *concordantibus* a. 1023 Ke *737; *confirmativo conspiramine* a. 957. 961 Bi 1009. 1073; *conspirantibus* a. 1002 Ke 707; *constipulatores* a. 957. 961 Bi 1009. 1073; *astipulatio primatum* a. 1045 Ke 781; *(cor)roboravi, consolidavi* a. 960. 963 Bi 1055. 1119. The most common form is *his testibus consentientibus* a. 898 Bi 576; a. 983 sqq. 987. 995 sq. 1005. 1007. 1009. 1013. 1018. 1020. 1033. 1035. 1045 sq. Ke *652. 1280. 1282 sq. 657. 1289. 1291 sq. 1301. 1303. 1306. *1308. 1316. 751. 778. 784. Once *consciis* a. 1007 Ke 1304. The word *consensi* often means no more than witness; Aronius, *Diplom. Stud.* 71 sq.

[12]) Ib. 59.

[13]) A. 701. 704. 948 Bi 103. 111. 869; c. 977 Ke 1276.

[14]) A. 671. 672. 674 sq. 678—81. 683. 686. 688. 697. 729. 742. 745. c. 762. 764—7. 769 sq. 780. 789. 794. 796. 798 sq. Bi *26 sq. *32. 35. 44 sq. 51. 58. 64. 67. *71. 96. 147. 162. 170. 173. 175. 194 sqq. 200. 202—5. 240. 256. 260. 269. 279. 281. 285. 293 sq.

forms. Only so far the above opinion seems right, that the ascendency of monarchy under Edward the Elder may have prepared the way for a state of things, which allowed the mention of the witan's consent in the middle of the charter to become rarer.

28. Though the king sometimes commanded[1] and perhaps normally induced his witan[2] to subscribe his charters, the words expressing their consent are no lifeless phrase of promulgation form, which would hardly have survived four hundred years in many hundreds of records. They mirror the real cooperation of the aristocracy. Bede keeps the witan together with the king morally responsible for the squandering of crown lands on sham monasteries[3], and scolds those bishops generally who receive bribes for subscribing charters.[4] A dry business remark of a. 836[5] stigmatises two ealdormen by name, who sold their consent. If it was given gratuitously the witan were honourably called codonors.[6] A charter proem[7] dwelling on the necessity of writing down political transactions describes them as doughty (*heroica*) statutes of kings, bishops, magnates, and decrees of the witan: surely a merely monarchical act could not have been designated by such-like terms. Another scribe seems to enhance, nay to exaggerate the responsibility of king and ealdormen for the charters they gave; he introduces the list of subscribers as 'the names of those who wrote and confirmed this'[8]; in fact they did not write. Furthermore the real force of the word *consensi* was at least sometimes felt; for in one

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28. [1]) *rege imperante*; Beda *Ad Egbert.* 10.

[2]) *rogat* witnesses.

[3]) *Ad Egbert.* 11.

[4]) Ib. 13. 16: *filargyria dictante, avari mercatus*; cf. *Benedictus abbas ... attulit* [c. 686] *duo pallia, quibus ab Aldfrido rege* [† 705] *eiusque consiliariis ... terram 3 familiarum ... comparavit; Hist. abb.* ed. Plummer 373.

[5]) Bi 416.

[6]) *condonantes* a. 772. c. 776 Bi 209 sq. 226.

[7]) A. 967 Bi 1199.

[8]) A. 852 Bi 464.

grant it appears after every name in the list of witnesses, but is, no doubt purposely, left out after that of the receiver of the charter. Nor is it used where witnesses merely affirm the publication of a sale, or a sentence of judgment between private parties. But the strongest proof that king and witan could represent two opposed parties bargaining with each other, lies in the fact that the king, if he desired to book folcland to himself, had to retransfer the same quantity of bookland into folcland.[9]

29. In the eleventh century the voice of witan in the landcharters sounds deeply subdued as compared with former emphasis; not much more than a form of publicity[1] remains. And now when the king conveys land by writ addressed to the county court, all trace of national witan is suppressed. Monarchy, meaning the government by king and court council, gradually came to dispose of crown lands arbitrarily: a process later on completed by the Conqueror.[2]

30. In another respect monarchy after Alfred paved the way for the dependence of the national assembly under Norman despotism. Edward the Elder suggested to his witan 'to enter into his own fellowship, to love or to avoid on sea and land what he would love or avoid': in other words he asked their oath of vassalage.[1] The intention clearly was to change the aristocracy from a dangerous rival into a pillar of monarchy. But statecraft ought to have learned from the church, that in the struggle against human selfishness promissory oaths failed to bind men, and that only daily coercion by organised administration could hope to conquer. One of Edward's successors, most likely in the next generation, had to address his witan: 'How improper, if I have the king's title without the power! does a man wish his lord well, if he does not

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[9]) Below § 62.

29. [1]) *ad noticiam principum propalata* a. 1042. 1046 Ke 763. 783. 1335.
[2]) Below § 67, n. 1.

30. [1]) II Ew 1, 1; *Gesetze* II 557: *Königstreue* 7 a.

allow him authority?[2]' Since all the witan were personal vassals of the king, since all the bishops and most of the others owned bookland which depended on royal jurisdiction[3], the relation of the assembly members to the crown changed but little when they became barons by feudal tenure in chief.[4]

V. 31. Among the members of the national assembly the king, as we have seen[1], sometimes enrolls himself; oftener, however, he stands above them. The churchmen are generally included among the witan[2]; but now and then they appear separately before them[3], thus preparing for the formation of a bishops'[4] bench, if not of convocation.[5] Nor are social and official distinctions neglected when the individual classes of which the witan consist are enumerated, instead of their collective name being given. But if the assembly as a whole is dealt with, we find no line drawn between ealdormen or higher aristocracy[6], and thanes or commoners; no germ of the division into two houses is discoverable. Nor are the members sitting by legal custom distinguished from those whom the king arbitrarily called, perhaps for one occasion only. We do not hear of a constitutional theory asserting anybody's right to be summoned.[7] Judging from the universal aversion to the fulfilment of the political duties amongst the provincial witan in county and hundred court, the seat in the

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[2]) App. ad Ælfr.-Guthr. 8. [3]) Above § 23.

[4]) Below § 65.

31. [1]) § 25.

[2]) a. 801. 835. 840. 864 Bi 303. 413. 430. 509.

[3]) *Gesetze* II 738, n. 7e; 787, n. 7; *sacerdotes et seniores* a. 774 Bi 213; a. 786 legatine synod; *episcopi optimatesque* a. 977 Earle 295; *ep. et principes* a. 804 Bi 313; *ep., principes, optimates* a. 864 Bi 509; *hierarchae* c. 1023 Ke 1324; *episcopi et alii sapientes de Kantia* III Æthelstan Insc.

[4]) Above § 20.

[5]) Stubbs, *Const. hist.* I 374.

[6]) *healwitan* (Ann. Agsax. 1009) means chief princes without relation to membership in the assembly.

[7]) It must not be inferred from the privilege of a wita, below § 48.

assembly was rather considered as an unprofitable burden gladly to be shirked.

32. The royal family, sometimes designated by a collective word[1], offer to the king his intimate counsellors, fill some princely posts of ealdormen, or are reckoned at least among the rich landowners. Possibly, however, a further qualification causes them to appear so often among the persons consenting to royal landcharters. They may have represented the royal kin, legally authorised to check the diminution of the lands of the reigning house which were not separated from the national property. Many a king's relative may lurk behind an ealdorman[2] or an abbess mentioned only with this title. Several single members of the king's family appear in ihe national assembly: his father[3], son[4], brother[5], brother's son[6], brother-in-law[7], and the *ætheling*[8], which can mean the reigning king's son or the male descendant from a former king. The royal ladies signing charters are the king's mother[9], grandmother[10], queen (or in Wessex the king's wife)[11], his

32. [1]) *Propinqui regis* a. 811—4 Bi 339. 341. 346. 348. Possibly the king's *amici* are synonymous (as often in other places) with *consanguinei* a. 674. 749 Bi 32. 178.

[2]) *frater atque dux regis* a. 736 Bi 154 is exceptional; Ceolwulf the future king of Mercia is once called *propinquus*, once simply *dux* (a. 814 Bi 346. 348), Ælfred's son-in-law *subregulus* a. 889 Bi 561.

[3]) Ine prol.

[4]) a. 693. 770. c. 772. 785. 787 sq. 790. 792 sqq. 830. 835. c. 863 Bi 81. 85. 205. 207. 247 sq. 251. 253. 259. 262. 265. 267. 269. 271 sqq. 396. 413. 515.

[5]) a. 664 Bi *22; c. 730. 736. 757. 766. 806. 810. 825; very often Eadgar: a. 956; Bi 154. 157. (cf. 162 A. 164. 166). 183. 218. *325. *331. 384. 968—71. 973—6. 978—84. 986.

[6]) a. 679 Bi 45.

[7]) a. 796 Bi 277 sq.; the king of Wessex was the brother-in-law of the Mercian who gave the charter.

[8]) Also *clito, indoles* a. 742. c. 757. c. 793. 880. 889. 956 sqq. Bi 162. 183. 272. 547. 561. 942. 968—71. 978. 1009. 1021.

[9]) A. 940. 942 Bi 748. 775 sq.

[10]) A. 966 Bi 1190 sq.

[11]) A. 618. 694. 696 sq. Bi *13. *86. *90. *92. *97 sq.; a. 729 (cf. Stevenson, *Crawford char.* 41). c. 764. 770. 774. 777. 780. 784 sqq. 788.

mother-in-law[12], sister[13], and daughter.[14] Since female regents of Wessex, Mercia and England are known in the seventh, tenth and twelfth centuries, we need not doubt that those ladies took part in state affairs and were present in the national assembly.[15]

33. Of the two sides of the witan the clerical one appears to us by far to preponderate. It is true that in spite of striving towards impartiality, the modern investigator cannot look upon the early Middle ages but through clerical spectacles, since history, records and legal documents, nay all the literary remnants of those times have been written by ecclesiastics, and since the style of the charters, partly also of the laws, is powerfully influenced by clerical language. But the hierarchical predominance in the national council remains a sure fact based on the wide spread conditions of the whole network of society, and possibly prepared by the priest's position in pagan times.[1] In Kent the bishop, as also the king, enjoyed the irrefragability of his mere word unconfirmed by oath; whoever henceforth had to transact legal business saw his profit to vouch a man of such authority to warrant or witness, and to have him subscribe to the weightiest documents.

The bishops with the king, without lay witan, sometimes represent the whole assembly. They legislate about ecclesiastical income[2], and they decide a lawsuit about bookland.[3] Nay, the archbishop alone or the tribal bishop

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790. 796. 801. 804. 808. 811. 814. 816 sq. 831. 836. 840. 848. 956. 966 Bi 147. 197. 203 sq. 213 sq. 216. 222. 234 sqq. 239 sq. 244 sq. 247 sq. 253. 259. 279. 282. 316. 326. 335. 339. 343. 346. 348. 350 sq. 356. 359. 400. 416. 428. 452. 972. 1175. 1177. 1190 sq.

[12]) A. 956 Bi 972.

[13]) A. 664 Bi *22.

[14]) A. 811 Bi 339.

[15]) Abbess Ælflæd exercised influence on the synod on the Nidd in 705; Eddi.

33. [1]) Above § 6.

[2]) I Æthelstan; As Alm; *Gesetze* II 316, n. 11 f. k.; 738, n. 7 c.

[3]) a. 961 Bi 1064.

may act instead of the full gemot. A gemot without bishops cannot exist.[4] All or most of the suffragans of Canterbury usually appear; their names are as a rule ordered according to a fixed precedence.[5] Of the northern province we hear but little, owing to the scarcity of Northumbrian records and to the long autonomy of Denalagu. Two archbishops of York, however, play leading parts: the homilist Wulfstan[6] from 1008 until Cnut's time, and Ealdred in 1066. As soon as Canterbury became subject to the supreme power of England, the primate is scarcely ever absent from her witena gemots. He is the king's chief counsellor. He alone shares with the king the honour of being personally named in some laws.[7] He even precedes the king in Wihtred's prologue and in the signatures of some records.[8] He summons some gemots in conjunction with him[9] and presides over others as his vicegerent. The witan are once[10] called the king's and the archbishop's. This prelate judges alone before king and witan in a lawsuit about bookland.[11] Nay, he together with the king represents the whole national government, when he receives the witan's formal promise to keep the laws[12] and when he enjoins payments due to the church[13]; and it is the nation itself in whose name he makes the king swear the coronation oath, forbidding him to squander further promises upon the greedy electors. When the witan are out of session, primates like Dunstan represent them at the court of

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[4]) Though a. 808 (Bi 326) ten ealdormen without any bishop sign, bishops were surely present, as the record is dated at easter in the royal residence.

[5]) Aronius 54 sqq.; cf. *ecclesiarum columnis sedendi ordine dispositis*; ad a. 1136 *Gesta Steph.* ed. Howlett 17.

[6]) The law VI Æthelred *ego Wulfstanus litteris infixi*; 40, 2.

[7]) *Gesetze* II 376, n. 11 sq.

[8]) a. 697 Bi 98.

[9]) a. 798 Bi 291; Ann. Agsax. 675, of the 11th century.

[10]) a. 812 Bi 341.

[11]) a. 804 Bi 313; cf. *Gesetze* II 326, n. 11.

[12]) VI Æthelstan 10; V Æthelred 40, 2.

[13]) IV Eadgar 1, 4.

monarchs like Edgar.[14] The archbishop was of course aware and proud of the ecclesiastical influence on lay government: Odo's synodal decree expects the progress of the church 'to be imitated with joy by king and people'.[15]

34. While the bishops, as provincial rulers and spiritual fathers of king, nobles or people, constituted a necessary element of the national assembly, the abbots, whom the monastic rule obliged to stay at home, cogent cases excepted, came by no means regularly to the gemot and most likely only in their character as powerful landowners. When monasteries had accumulated large wealth, in 972 and 978[1], as many as 13 and 8 abbots respectively are found signing assembly records. Abbesses occur also among the subscribers, but they were partly royal ladies.[2] Many other ecclesiastics[3], below the rank of prelates and not to be considered merely as their retinue[4], attended the gemots according to the law prologues[5] as well as to the witnesses' lists. The chancellor does not appear before the Confessor's reign.[6] A predecessor of the treasurer may have been Æthelheard *abbas et economus.*[7] Some of the priests who witness royal charters bear names which recur later on as those of bishops. Possibly they were then court chaplains. At any rate we should have to infer the presence of these clerical officials from that of the lay officers of the royal household. Winfrid-Boniface gained as Westsaxon ambassador to Canterbury such renown with the clergy and lay magistrates of Wessex, that henceforth he was very

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[14]) cf. *Gesetze* II 313 last line.

[15]) a. 943 Bi 790.

34. [1]) Bi 1282. 1309; cf. c. a. 800 Bi 201; a. 964—7 Bi 1145. 1176. 1199.

[2]) Above § 32 note 15; a. 811 Bi 335; Chadwick, *Agsa. instit.* 308.

[3]) Many priests a. 825 Bi 384.

[4]) Or as oathhelpers to a litigant party.

[5]) *Gesetze* II 738, n. 7 sq.

[6]) a. 1045. 1061—5 Ke *779. 810. 813. *824 sq.

[7]) a. 749 Bi 179; if then very young, possibly the later archbishop.

often present at their gemot.[8] An archdeacon, a prior[9], and even deacons are found signing secular records; simple monks subscribe only to ecclesiastical documents.

35. Among the lay members of the national assembly, kings of Scotland or Wales[1] and underkings of mediatised heptarchic states[2] appear but rarely. These underkings may be meant under *principes*[3], and, if they descended from a royal house[4], under *patricii*[5]: two classes which sometimes precede the ealdormen. At other places, however, all these noblemen are comprised under *duces*. Distinction by office, as different from nobility by birth, may possibly be designated by 'dignities' and 'magistrates'.[6] From the tenth century many an ealdorman[7] got the Danish title of earl, at least sometimes in order to denote his extraordinary power; this class of earls is not mentioned separately in charters or laws. Above the simple, untitled witan[8], stood indeed a higher nobility consisting of prelates, princes and ealdormen[9]; their position was strengthened by the rule, expressed in the tenth century, that bishop and ealdorman presided over the county court. In the assembly, however, the line dividing them from the thanes may have been drawn socially only, not constitutionally. It certainly has nothing to do with the later distinction

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[8]) *synodali eorum instituto* above § 19 n. 9.

[9]) Bi 380. 384.

35. [1]) a. 928 (*subreguli*). 931. 934 Bi 663. 677.

[2]) *subregulus* of the Hwiccas is also *comes* of Mercia a. 736 Bi 154. 223. 232; *subregulus* of Mercia a. 889 Bi 561.

[3]) A. 747. 798. 811 Bi 174. 289. 335; *patricii et principes* a 778 Bi 224; *duces seu principes* a. 801 Bi 201; clearly synonymous: a. 785 Bi 247 sq. *Senatores* precede *duces* (a. 786 legatine synod) and *magistratus* (a. 848 Bi 454); *satellites* precede bishops, *comites, milites* a. 964 Bi 1143.

[4]) a. 680 sq. 686. 742 Bi 58 sq. 67. 162: *Ofa* probably the later king.

[5]) A. 774 Bi 213; cf. among the Franks Sohm, *Fränk. Reichsverf.* 456.

[6]) Above § 14.

[7]) *Gesetze* II 360, n. 8—9.

[8]) Below § 36.

[9]) England's 'noblest witan' or 'highwitan'; Ann. Agsax. 978. 1009. 1062. Above § 31 n. 5.

between greater and lesser barons. The presence of ealdormen in the assembly must be understood even where the sources speak only of nobles generally.[10] Mercian gemots of a. 808. 824[11] counted 10 to 13 ealdormen, those under Eadred and Eadwig seven or eight. But many a witness may be called king's relative only, though being an ealdorman.[12]

36. The rest of the assembly members below the rank of ealdormen, is sometimes[1] called witan or eldest[2] in the most restricted sense. Among the king's court officers[3] who witness royal charters from the eighth century[4], and who may partly be hidden under ealdormen[5], dignities, thanes and gesithas, we find the chamberlain[6], the steward[7], the cupbearer[8], and the master of the horse.[9]

37. While the earliest nobles by descent, appearing highly privileged in the Kentish laws, must be assumed to have been distinguished among the witan enacting these laws, no such class[1] is to be discerned from Ine's times. The Latin title *comes*[2] and *pedissequus*[3] after witnesses' names, most likely translating *gesith* and *cinges gefera*[4], seems to designate a member of the royal *comitatus*.

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[10]) *optimates et nobiles* a. 786 legatine synod.

[11]) Bi 326. 378.

[12]) *Heardberht frater regis* (c. 730 Bi 157) was a *dux* a. 736 Bi 154.

36. [1]) Ine Prol.; a. 825 Bi 386; cf. *Gesetze* II 738, n. 8 d; 'best witan' a. 1061 Ke 1341; cf. 'best men of London' Ann. Agsax. 1052.

[2]) *maiores natu* after *principes, duces, magistratus* a. 811 Bi 335.

[3]) *palatinorum usi consilio* a. 1045 Ke 779.

[4]) Larson, *King's household* 193 quotes instances from Æthelstan's time.

[5]) *dux et discifer* a. 785 Bi 245.

[6]) *burpegn, cubicularius* a. 963 Bi 1120 sq.; a. 972 Bi 1286; *claviger* a. 930 Bi 667; *camerarius* a. 1060 sq. Ke *809 sq. 904; cf. above § 34, n. 7.

[7]) a. 926 sq. 956. 968 Bi 658 sq. 949. 972. 1211; a. 1062 Ke 813.

[8]) *pincerna* a. 740. 778 sq. 809. 958 Bi 160. 232. 328. 1035.

[9]) *steallere* c. a. 1021 Ke 1327.

37. [1]) The royal house excepted; above § 32.

[2]) a. 805 Bi 322.

[3]) a. 824 Bi 378.

[4]) c. a. 744 Bi 171.

About 825 the *gesith* begins to be replaced hy the thane, who is usually Latinised by *miles* or *minister.*

The majority of the later assemblies consisted of thanes. In 931 and 934 no less than 59 and 52 thanes respectively sign charters.[5] They are here never called king's thanes. This qualification, frequent in laws and annals, certainly belonged to many of them. We may infer that it was omitted throughout as self understood. It is true that the thanes of that shire or province where the gemot happened to be held were present at Oxford in 1015[6], and that the Confessor[7] counts all Norfolk thanes among England's witan. But these objections can be explained away. Either these thanes were royal too, or 'witan' bears here a wider notion than assembly members only, or the inhabitants of the meetingplace enjoyed an exceptional privilege such as the Londoners[8] later on certainly did. We have seen Edward the Elder striving to bring all the witan under the crown's vassalage.[9] Even a bishop could be reckoned among the king's thanes.[10] It is royal court service that appears to the latest Anglo-Saxon generation indispensable for the ascendency from the commoner to the thane.[11] The other and older condition for the raising of the freeman to noble rank consisted in property. Many witan were, no doubt, privileged with bookland. Long before the Conquest the members of the national assembly, or at least most of them, were direct crown vassals and great hereditary landowners, whose property stood under crown jurisdiction. But property was not the only condition for a seat in the assembly nor indispensable to it.

38. Royal reeves witness charters in the eighth and ninth centuries. Since one man is sometimes designated

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[5]) Bi 677. 702.

[6]) Ann. Agsax.

[7]) c. a. 1061 Ke 853.

[8]) Below § 40. 65 n. 6.

[9]) Above § 30. The mesne vassal at the royal court serves there his noble lord, not the king; Geþyncðo 3. Nor are bishops' or thanes' vassals to be discerned among witan.

[10]) Ann. Agsax. a. 897.

[11]) Geþyncðo 2.

as reeve and prince, or as reeve and gesith, we may suspect many a provincial administrator to lurk behind the general titles of noblemen mentioned above.[1] Possibly the procurators of the country[2] and the king's *prætores*[3] are also reeves. Some charters are signed by five or six reeves.[4] The judges, who in the charters at times precede the 'elders'[5] and even the magnates[6], but once follow the ealdormen[7], may belong, like 'the judges of the Kentishmen' to the old popular magistracy whose judicial dignity was later on conferred by the king upon his reeve. The office of sheriff did not branch off from the rest of the reeves before the tenth century. Under Ethelstan not all the provincial administrators appointed by the crown were regular assembly members; or else they directly, and not the witan[8] indirectly, would have been entrusted with the task of making the people swear the oath of peace.

39. People and army being identical in the early age of every Germanic tribe, we must not expect to meet in the national assembly with a special class of warriors besides ealdorman, thane, gesith and reeve, whose duties are partly or chiefly military. The old double sense revives in the *here* of the Denalagu and the Anglo-Danish court. The *here* banishes Swen, but the witan confirm this outlawry; and his father Godwin is banished by the king in his council with the army's consent.[1] The standing army

38. [1]) *Præfectus et princeps* c. a. 766 Bi 220; *comes atque præfectus* c. a. 762. 784 Bi 194. 244; *præfectus et comes* a. 872 Bi 535; *comites, ministri, satrapae*, above § 14, especially if mentioned after *duces*. *Dignitates* after *duces, iudices, proceres* may mean royal court officers and reeves; a. 938 Bi 663.

[2]) a. 931 sq. Bi 674. 676 sq. 689 sqq.

[3]) After *proceres* a. 816 Bi 357.

[4]) a. 778. 824 Bi 225. 377; Stubbs (*Const. hist.* I 125) sees in the *præfectus* a. 757. 772. 774 Bi 183. 208. 213 sq. the head of the royal court household.

[5]) *judices, maiores natu* a. 705. 811 Bi 115. 335.

[6]) *iudices, proceres* a. 928 Bi 663.

[7]) *duces, iudices* a. 786 legatine synod.

[8]) VI As 10.

39. [1]) A. 1049. 1051 Ann. Anglosax. Flor. Wigorn.

and navy[2] influenced the assembly in the last Anglo-Saxon generation powerfully. Possibly they are meant by common soldiers[3] mentioned after the nobles. The knights, who appeared on the Conqueror's courtdays[4], ranging after earls and thanes, were probably connected with recent chivalry, or, if they continue an older social class[5], they are certainly not akin to the municipal knightengild of Canterbury.[6]

40. London enjoys in the eleventh century an exceptional position far above all the other towns of the kingdom. Though its cooperation in the ordinary witena gemot cannot be proved, the community of its citizens in 1016 elected Edmund Ironside; and after Cnut's death the Danish navy of London helped at the Oxford gemot to elect Harold against the Wessex party. In 1066 the 'best'[1] men of London took part in the election of William. At the paramount function of the national assembly, therefore, the city played a considerable part, which was continued[2] under Stephen, Richard and John. This rôle forms an important link between the Anglo-Saxon and Norman assemblies. London's voice in the national policy may partly originate from the influence of the people of the district where the witan met[3]; they favoured the City since the tenth century.[4]

41. Most of the assembly members, the king's family, prelates, priests, ealdormen, royal officers, and thanes were protected by a high wergeld. But not all had risen above the rank of the common freeman.[1] To the commoners may have belonged some of the clerks in lower orders, reeves, warriors and Londoners, whom we mentioned above,

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[2]) *huscarlas, liðmen.*

[3]) *proceres, ceteri minoris ordinis gregarii milites*; c. a. 1040 Ke *761.

[4]) Ann. Agsax. 1086; below § 65, n. 4.

[5]) Cf. below § 47, n. 16.

[6]) C. a. 863 Bi 515, they sign in a Kentish gemot for local purposes after the community of the interior city.

40. [1]) Above § 36 n. 1. [2]) Below § 65, n. 6.
[3]) Above § 37 n. 8. [4]) Below p. 45, line 1.

41. [1]) *þeodwitan, eorl ge ceorl*; Geþyncðo 1. The notion 'gathering of ceorls or meeting place' glosses *compita* (crossway) with Ælfric, not a

as well as some of the 'witan learned in ecclesiastical knowledge and secular law'[2], whom a theologian of about 1030 ranges after king, bishops, dukes, reeves, and judges. To this class, distinguished by intellect only, may be reckoned the witan without any special title.[3] Clever men summoned once may have been called to several ensuing assemblies[4] and possibly acquired the social privileges of witan; but a lifelong membership enjoyed by those higher classes must not be attributed to them.

42. The people at large, a crowd unnamed, unorganised and irresponsible, such as had flocked together not from a whole state, but from the districts surrounding the meeting place, accompanied[1] in some cases the witan's decisions with inarticulate applause, or shouted possibly 'yea, yea' at the solemn proclamation of their decrees.[2] These persons are, constitutionally speaking, not so much identical with, as rather degenerated descendants from the ancient bystanders who, in contradistinction to the sitting voters[3], had to give a necessary confirmation. In particular, when a king had been elected by the witan, the people gave their acclamation. William I. was so saluted, not when he was elected by a few witan, but at the coronation. A late report says that Alfred, elected by bishops and ealdormen, was reverently saluted by all the people. Exiled Ethelred, when invited back by the witan in 1014, answered to all the people.

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word in any way similar to witena gemot. When in 662 the Northumbrian king decided in favour of Roman church usage against the Scots, *faverunt maiores cum mediocribus* (Bede); in English the latter would be *medume* = *ceorlas*; cf. *Gesetze* II 442, n. 2c.

[2]) *larwitan and lahwitan* Polity 5, ed. Thorpe *Anc. laws* 424.

[3]) A. 848 Bi 452.

[4]) Above § 34, n. 8.

42. [1]) When Stephen in 1136 called prelates and *primos populi ad concilium Londonias, vulg(us) confuse et permixtim, ut solet, ubique se ingere(bat)*; Gesta Steph. ed. Howlett 17. This customary intrusion is not an innovation and seems to go back to ancient times.

[2]) *Dixit populus: Fiat, fiat!* are words taken from the form of the excommunication; they cannot prove a popular confirmation of the witan's judgment; Bi 687.

[3]) A. 664, Beda III 25; *principibus sedentibus* Eddi a. 705.

Clerical chroniclers[4] indeed confuse the people's acclamation with the witan's resolution, but they are seduced to this inaccuracy by the half democratic phraseology[5] of church elections. This same ecclesiastical style seems also to have influenced the democratic ring of some of the witan's names.[6] At the deliberation of Wihtred's law, says the prologue, there spake every degree of the church unanimously with the obedient 'folk', clearly in the sense of laymen. At other places *folc* means only the public or everybody.[7] Some of these forms desire to lay stress on the national character of the witan, and do not at all want to confer a democratic notion.

The time preceding Ine apart[8], it seems quite improbable that the common freeman, if he did not stand in any special relation — clerical, official, or military — to the crown, had a theoretical right to vote in the assembly or as a rule attended it. The earliest author who breaks a lance for the people's share in the witena gemot is the forger of laws who works for the interest of the Londoners about 1200. He fabricates his lies from the etymology of the word *folcmot*[9], from the real popular assembly at Saint Paul's, from the exceptional influence of the citizens at the election of some kings, and last not least from the imaginary programme of the constitutional reformers leading to Magna charta. If modern historians[10] have arrived at similar conclusions, not only liberal partiality has seduced them, but also the anti-feudal tendency to derive modern parliament from republican Teutonic institutions of Tacitean

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[4]) Asser a. 871; Flor. Wig. a. 959; Ann. Agsax. 1042; cf. *Gesetze* II 557. 470, n. 18d.

[5]) Huntingdon translates *witan* in the Agsaxon annals a. 755 by *proceres et populus.*

[6]) Above § 15, n. 10.

[7]) The Confessor swears the coronation oath before all the folk i. e. publicly; Denmark's request for help in 1048 seēms inopportune 'to all the people' i. e. everybody; in 1018 'all men' chose Eadgar's constitution i. e. the leaders of the Danish and the English parties.

[8]) See above § 7.

[9]) Above § 15, n. 11.

[10]) Above § 3, n. 4.

colouring and to ignore as much as possible Franco-Norman influence. The absence of commoners from, or their insignificance in the regular witena gemots since about 690 may be inferred from many considerations.

We have mentioned the difficulty the peasant would have felt in undertaking the long journey to the meeting place. We may repeat that social and political equality, the necessary presupposition for a primary assembly, had ceased to exist. We have perceived the aristocratic sound ringing in most of the names of the assembly.[11] Furthermore, not one house, as far as we can judge about Anglo-Saxon profane architecture, was capacious enough to accommodate all the freemen, nay only the landowners of small Sussex, Essex or Kent; nor did open air meetings at all remain the rule after the seventh century.[12] And now when Mercia and Wessex had enlarged their dominions, the more so when England had become united, a primary assembly of all the freemen would have been inconceivable on account of the political unwieldiness of such a mass of men, and the physical impossibility in feeding them and their horses at one place. — Again, since many a dynast obtained for his subjects royal exemption from the duty of attending shire and hundred courts, and since the journey to the distant witena gemot was much more tiresome, he would not have failed to get them exempted therefrom too, if they had been theoretically bound to appear.

43. Leaving the field of hypothetical inferences we rely on indisputable facts. The witan treat the infinitely larger majority of the governed people as a passive mass, that has to swear to them the oath of lawfulness[1], to obey their laws, to keep their promises[2] and treaties, and to bear the burdens they charge them with. Those laws often furthering the lord's right and rarely protecting the dependant man against the curtailing of his liberty, clearly betray their aristocratic origin. From the assembly were constantly

[11]) Above § 7. 14. [12]) Below § 45.

43. [1]) IV Æthelstan 3, 2. VI 10. 11. V Æthelred 1; *Gesetze* II 723: *Volk*.
[2]) IV Eadgar 1, 5.

absent all the freemen of common wergeld (with the few exceptions mentioned above), not only the poor without a house of their own or with but a few acres — probably the most numerous part of the free population —, but also the peasants in a manor or a free village, all the possessors of rent land or lænland which need not always have been small, the industrial and commercial classes in towns, with the occasional exception of Londoners, and even those owners of several hides of free land who were assessed by the commonwealth directly, but had not risen to thaneship. Nay even the richest thanes, if they depended on a bishop, ealdorman or king's thane, seem to have been excluded.[3] All this immense majority of Englishmen did not elect one single member of the assembly, nor did they influence the way in which the witan were nominated by the king or took their seat by office.[4] The modern idea that the witan stood like delegates in place of the absent people never entered an Anglo-Saxon's mind; they rather represented the nation in its entirety.[5]

44. The minimum or maximum number of the witan seems never to have been legally fixed. In reality the number differed considerably.[1] It was often larger than the circle of subscribing witnesses.[2] We, therefore, cannot ascertain whether three bishops and four ealdormen, the whole number mentioned in a Mercian record[3], formed a

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[3]) They do not appear in charters. Their class is continued by the *landsittende* mentioned after and apart from the *witan* by the Ann. Agsax. 1086.

[4]) With the possible exception of the 'judges', in so far as these were still popular magistrates.

[5]) In the earliest witena gemots (above § 7), and in the provincial assemblies which continued those of heptarchic states, and especially in the Denalagu the state of things may have been more democratic.

44. [1]) *Pergrande concilium* a. 811 Bi 335.

[2]) This is distinctly said in charters a. 957. 961. 963 Bi 1009. 1073. 1112: *cunctis consencientibus optimatibus, praecipue hiis quorum nomina subnotata.*

[3]) a. 814 Bi 344. 346. 348; 8 witnesses a. 758 Bi 185; 18 c. a. 793 Bi 272; 21 a. 774 Bi 213; 26 a. 948. 965 Bi 869. 1112.

minimum, or whether 16 was the average in Mercia and 50[4] in Wessex in the tenth century.[5] Ninety witnesses appear twice about 933.[6] When but eight or ten persons are named[7], we might suspect a mere court council to be meant, but their signature is called that of 'all the optimates universally', or they appear 'assembled in the king's presence' — quite the style of a witena gemot. In a Mercian gemot of 825 sixty witnesses[8] are recorded, of whom but 42 sign; the rest are unnamed priests; 60 possibly was a round number. Likewise, if in 931[9] just a hundred persons subscribe, either the king has purposely summoned this round number or the record chaplain has selected just 100 to sign. The maximum number of the assembly can scarcely have risen much higher[10], as in the tenth century, just when large numbers are to be expected, the meeting could be held in a house (once its upper floor), which in most cases was no royal palace, but the lord's hall in a royal village or a mere hunting seat. Since king, bishop and ealdorman used to travel with retinue (which, however, need not have entered the council) we must conceive the crowd assembling for a well frequented witena gemot as rising to at least three hundred persons and as many horse. It was but a revolutionary exception if Godwin in 1051 appeared with an army, nor did the king allow him to take more than twelve companions into the gemot. While all the bishops and all the ealdormen appear in a good array of charters, no other class of witan, including king's thanes, seems ever to have been summoned or to have come in full number.[11]

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[4]) 43 a. 966 Bi 1176.

[5]) Stubbs, *Const. hist.* I 125; Chadwick *Anglo-Sax. instit.* 312.

[6]) 89 a. 932; 91 a. 934 Bi 689. 702.

[7]) A. 814 Bi 348.

[8]) Bi 384. 386.

[9]) Bi 677.

[10]) The sum of 121, often quoted, seems an error.

[11]) 'Les assemblées dites plénières ne le sont jamais qu'en théorie'; Luchaire, *Manuel instit. franç.* 251.

VI. 45. As early as 673 archbishop Theodore fixed Clovesho for the yearly[1] synod of the English church. Here the state did not follow the good example. No place was fixed for the witan's meeting, neither by custom nor theory. When the army was gathered with its leaders, king, bishops, ealdormen, king's thanes and reeves, these noblemen, though summoned for the military purpose only, might constitute a witena gemot, legislating, settling suits, or conveying bookland.[2] Among the 116 places where (according to reports preserved to us) Anglo-Saxon gemots have been held, 76 occur but once and about 20 cannot be certainly identified. They must have been well known, easily found out by strangers, and have indeed been called famous.[3] Owing to the summons all the country knew beforehand where the next witena gemot was to be held, and parties wanting to settle business at the royal court probably repaired there in order surely to find the king; else his future sojourn might be rather difficult to be made out. The Mercian[4] or Westsaxon[5] gemot was sometimes held not in Mercia or Wessex proper, but in the territory of a neighbouring state that had by that time been annexed.

Open air meetings[6], no doubt genetically speaking the oldest of all, are designated by several Anglo-Saxon words, none of which, however, need necessarily refer to national witan. As late as 1052 the witan met outside the London wall, not to mention Runnymede in 1215.[6a] The Northumbrian assembly of 702 and the synod of Acle in 782 met in the open, since at the former the king, at the latter a bishop

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[1]) Below § 46, n. 21.

[2]) *Scriptum in hoste, quando rex movet contra Brittones* a. 825 Bi 389 sq.; *in expeditione* a. 882 Bi 550.

[3]) VIII Æthelred 37; a. 842. 845. 937 Bi 438. 449. 719; a. 999 Ke 703.

[4]) Clovesho and Cealchyth are localised near London.

[5]) The law I Æthelred for Wessex is given at Woodstock in Mercia, and III for the Denalagu at Wantage.

[6]) Cf. Gomme *Primitive folkmoots* 57.

[6a]) Cf. below n. 10.

appeared in a tent.[7] The spots chosen seem to have been hallowed for popular meetings in pagan times. They lay on rocks[8], hills[8], heathes[9], or meadows[10], near rivers[11], fords[12] or famous trees[13], or at a political frontier.[13] Another class of assembly places consists of tribal centres[14], some of which grew up to large cities, a third of royal towns, villages[15] or hunting seats[16], and a fourth of royal monasteries.[17] Almost half of all the known places were in some way demonstrably connected with royalty, either belonging to the crown domain, or to a convent of royal foundation, or being royal residences or provincial government centres. The kings of Mercia liked to gather their witan at Tamworth. From the tenth century Winchester and Gloucester saw indeed several gemots, but not so very often that the Conqueror's choice of these towns for two of his three annual courts[18] could be called the continuation of an old rule. Tradition may have influenced him only with regard to the third place he favoured: in London no

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[7]) Stubbs *Councils* III 252. 439.

[8]) *Gesetze* II 450, n. 4 d. 666 s. v. *Stein*; add: *Hurstingstone, Leightonstone, Hamestan.*

[9]) Penenden heath for Kent.

[10]) The field where Magna charta was granted *dicitur Runemade, pratum consilii, quod ab antiquis temporibus ibi de pace regni saepius consilia tractabantur;* Flores histor. ed. Luard II 153.

[11]) *locus synodalis* for Northumbria on the Nidd; in Wilts. on the Nodder, both a. 705.

[12]) Seven placenames mentioned in note 21 end in *-ford.*

[13]) An oak *in confinio Hvicciorum et Occidentalium Saxonum* Beda II 2. Cf. below note 21 s. v. *Creodan.*

[14]) Buckingham, Canterbury, Colchester, Dorchester, Exeter, Lincoln, London, Northampton, Nottingham, Oxford, Selsey, Somerton, Wilton, Winchester, Worcester, York.

[15]) Andover, Barrow, Bydinctun, Calne, Cheddar, Cirencester, Escant, Frericburn, Frome, Gloucester, King's Enham, Kingston, Sutton, Tamworth, Wagg, Walmer, Wantage, Wellesburn, Wellow, Werburgewic, Wichbold and some of the places mentioned in n. 14.

[16]) Woodstock, Bitchley.

[17]) Abingdon, Amesbury, Bath, Glastonbury, Malmesbury, Winchcombe and some of the places mentioned in n. 14 and 15.

[18]) Below § 66.

less than 22 witena gemots are recorded from 811 to 1066, nine of which from 1044.

No special house of the witan existed. The words designating meetings in houses need not refer to them.[19] In the royal village of Calne the witan were sitting in 978[20] in an upper floor of the hall, at Wilton and Cheddar in 854 and 956 in the king's palace. A church as the place of a witena gemot is mentioned only in three spurious documents.[21]

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[19]) *Gesetze* II 449, n. 1; add *dômhus, lusthing.*

[20]) Ann. Agsax.; *aula villae regiae* a. 997 Ke 698.

[21]) a. 704. 744 Bi 109. 169: *in lignea basilica*; a. 993 Ke *684: *in oratorio.*

Alphabetical list of the places where witenagemots were held (identification after Kemble and Birch): Abingdon c. a. 929 Bi 687 sq. *Acle* a. 782 (Ann. Agsax.); 787 sq. 804 sq. 810. 824. 970 Bi 254. 313. 322. 377; see above n. 7. Amesbury a. 858. 932 Bi 495. 691; 978. 995 Ann. Agsax. Andover, *Gesetze* II Eadgar 1; 980: II 279; 994. 998 Ann. Agsax. *Andredeseme* a. 842 Bi 438. *Astra* a. 839 Bi 421. Axminster a. 901 Bi 588. Aylesford a. 910 Bi 1064. Bapchild c. 706. 803 Bi 91. *290. Barrow a. 814 Bi 348. Bath a. 796 Bi 277 sq.; *Gesetz* VII Æthelred. Berstead a. 695, *Gesetz* Wihtræd. Berkhampstead a. 1066, William I. elected. *Besingahearh* a. 688 Bi 72. Bitchley a. 904 Bi 604. 611 sq. Bregford *iuxta vadum* a. 683 Bi *65. Brentford a. 705. 780 sq. Bi 115. 236. 241; a. 957 Stubbs *Dunstan* p. xc, or Bradford, Wilts. *Bromdun, Gesetze* I Æthelred 1, 2 = III 4. Buckingham a. 934 Bi 704. Burford a. 685. 792 Bi 65. 264. *Bydinctun* a. 822 Bi 370. Calne above n. 20. Canterbury a. 801. 838. 844. 867 Bi 303. 419. 447. 516. *Cealchyð* ('Chelsea'; Stubbs *Councils* III 445) a. 681. 785. 788 sq. 793. c. 800. 803 sq. 815 sq. 898. 996 Bi 60. 247 sq. 254. 256. *267. 201. 308. 313. *352. 390 sq. 577; Ke 696. Cheddar a. 941. 956. 968 Bi 765. 966. *1219 sq. Chippenham a. 933 Bi 695. Cirencester a. 986. 999 Ke 1312. 703; a. 1020 Ann. Agsax. *Clofesho* ('Cliffe at Hoo' Plummer *Saxon chron.* II 70; 'near London' Stubbs) a. 716. 742. 747. 794. 796 (also Ann. Agsax.). 798. 803 sq. 824 sq. Bi 91. 162. 174. 269. 291. 309. 313. 377. 379. 384. 386. Colchester a. 931. 940 Bi 674. 750. Coleshill a. 799 Bi 295. Cookham c. a. 997 Ke 704. *Cræft* a. 836 Bi 416. *Creodan treow* a. 825 Bi 389 sq. *Culinton, Gesetze*: III Eadmund. Dorchester a. 833. 835. 847. 863 sq. 868. 935. 937 Bi 410. 413. 451. 508. 510. 520. 716. 718 sq. Droitwich c. a. 880. 888 Bi 557. 582. East Horstead a. 1042 Quadripartitus Arg. 9. Edington a. 957 Bi 999. *Escant* a. 852 Bi 466. Everly a. 704 Bi *108. Exeter a. 928 Bi *663;

46. Though several Teutonic tribes on the Continent used to assemble periodically at fixed times, and though

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Gesetze: II Eadward 1. V Æthelstan Pro. 1; 3. III 6. IV 1. VI Pro. 1, 4. 10. 12, 1. Exminster see Ax-. Faversham, *Gesetze*: III Æthelstan 2 sq. IV 1. VI Pro. 1, 4. 10. 12, 1. Finchale see Wincanhealh. *Frericburn* a. 838 Bi 418. Frome a. 934 Bi 705. *Fullingadich* a. 675 Bi *34. Gillingham a. 993. 1042 Ke *684. 1332. Glastonbury a. 704 Bi *709. Gloucester a. 896. 964 (*regia urbs*) Bi 574. *1135; a. 1051 Ann. Agsax. *Godmundesleah* (Gumley?) a. 749. 772. 779 Bi 178. 209. 230. Godmundham (Goodmanham) a. 627, Beda II 13. Greatley, *Gesetze*: II Æthelstan Epil. *Hæthfeld* a. 680 Bi 1330. Ham c. a. 925 Bi 1064. *Hamtun* see North-, South-. Hanney a. 956 Bi 950. Hartleford a. 779 Bi 230. *Hebbesham* c. a. 882 Bi 550. Irthlingborough c. a. 790 Bi 1334. King's Enham, *Gesetze*: VI Æthelred. Kingston a. 838. 933. c. 945 Bi 421. 647. 815; c. 1020 Ke 1327; hallowing of the king a. 924. 946. 955. 975. 979; cf. *Gesetze* II 535. Kirtlington a. 977 Ann. Agsax. Lincoln a. 1045 Ke 956. London *oppidum regale* a. 811 Bi 335; *regalis villa* c. 820 Bi 384; a. 790. 930. 934. 966. 973 Bi 265. *701. 703. *1179. 1293. 1296; c. 944 *Gesetze* I Eadmund Pro.; a. 998 Ke 700 sqq.; before 1022 Ke 733. a. 1045 Ke *779; a. 994. 1012. 1016. 1044. 1047 sq. 1052 bis. 1055. 1065 sq. Ann. Agsax. Long Dean c. 882 Bi 553. Lullingminster a. 930 Bi 669. Luton a. 931 Bi 677. Malmesbury a. 892. 901 Bi 568. 585. Mereworth a. 843 Bi 442. *Middeltun* a. 932 Bi 639. Mitcheldever a. 862 Bi 504. Nidd and Nodder see above n. 11. Northampton a. 1065, Ann. Agsax. Nottingham a. 930 Bi 703. Ockley see Acle. Olney a. 1016, Ann. Agsax. *Oswaldesdun* a. 855 Bi 487. Oxford a. 1015. 1035. 1065, Ann. Agsax. Penkridge a. 958 Bi 1041. Prince's Risborough a. 884 Bi 552. Repton a. 848 Bi 454. Saint Albans see Verulam. *Saltwic* see Droitwich. Seaford a. 871—99 see Stevenson *Asser* p. LXXII. Selsey a. 780 Bi 1334. Somerton a. 860. 949 Bi 499. 876. Southampton a. 826. 840. 900 Bi 389 sq. 431. 596. *Streonesheall* see Whitby. Sutton a. 1042 Ke 762. 765 sq. *Swinbeorh* (Swanborough Tump) c. 868 Bi 553. Tamworth before a. 675 Bi 34. 39; a. 780. 808. 840 sq. 845. 849. 855. 857 Bi 239 sq. 326. 430. 432 sq. 450. 455. 488 sq. 492. Tanshelf a. 947 Ann. Agsax. Thundersfield, *Gesetze*: IV Æthelstan. Twyford (? Alnmouth; Plummer) a. 684, Beda; a. 685 Bi *66. Verulam c. 793, Rog. Wendov. Wagg see Wie. Walmer a. 970 Bi 1265 sq. Wantage a. 997 Ke 698, *Gesetze*: III Æthelred Pro. Warborough a. 916 Bi 632. Wellesburn a. 862. 872 Bi 503. 535: *regali vico*. Wellow a. 931 Bi 676: *villa regali*. *Werburgewic* a. 840 Bi 152 (*villa regalis*); a. 823 Bi 373; cf. Earle *Landchar*. 453. Whitby a. 662, Beda III 25 sq. Whittlebury, *Gesetze*: VI Æthelstan 10. *Wiae* a. 839 Bi 426 (*villa regia*); *Weae* a. 845 Bi 449: 'Wagg' Kemble. Wichbold a. 815. 831. c. 838 Bi 353. 400. 421: *villa regali*. *Wihtbordesstan*, *Gesetze*: IV Eadgar 1, 4.

the English church decreed in a. 673[1] and 786 that every year two synods should be held, in English states no rule seems to have existed on which day or how often the witan were to meet. Summoning by governmental proclamation, therefore, became necessary — decidedly an increase of power for monarchy. Nor can we ascertain how often gemots used actually to recur, as Anglo-Saxon charters are mostly dated by the year only and not by the day.[2] Nevertheless, by comparing the lists of witnesses besides other characteristics, we may in some cases supply the date with tolerable likelihood and assign a whole bundle of records to one gemot, or reversely attribute two records of the same year to different gemots.[3] The case that as many as four gemots of one kingdom were held in one year occurs, as far as our sources allow us to judge, but

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Willerstry a. 862 Bi 506. Wilton a. 838. 850. 854 Bi 421 (*villa regali*). 459. 468—76. *Wincanhealh* a. 765. a. 788; Simeo Dun. Finchale? 'Wincle' Stubbs *Councils* III 444. Winchcombe a. 811. 942 Bi *338. 771. Winchester a. 855. 900. 909. 934 Bi 484. 594. 622. 702; a. 901 coronation of Edward I.; a. 993. 1065 Ke *684. *815; c. 1030 *Gesetze*: Cnut; a. 1043 coronation of Edward the Confessor. Wolvermere a. 898 Bi 576. Woodstock, *Gesetze*: I. IX Æthelred Pro. Worcester? a. 873 × 899 Bi 579. Worthy a. 931 Bi 675. Woodgate a. 869 Bi 525. York a. 685; Beda IV 27; synod?

46. [1]) Above § 45, n. 1.

[2]) Not two genuine texts exist that could by bearing the same day be ascribed to the same gemot.

[3]) E. g. if one is signed by a bishop, whose successor appears in the other. In a. 942 the documents Bi 771. 774. 776 sq. lack the signature of an archbishop; three, which bear it (n. 772. 775. 778), are therefore later, Odo having been consecrated in the mean time. Again, in 956 Birhthelm became bishop of Wells, while a namesake was bishop of London. Four documents mentioning the two are probably later than the rest where but one appears. Furthermore in 824 *Beonna* signs after the bishops as *electus* in one document, and as *episcopus* in another, also given at Clofesho; most likely it was here that he was consecrated (Bi 378 sq.). Birch prints no less than 67 records of a. 956, assigning only one (n. 966) to the Cheddar gemot. As 19 witnesses' names are identical in all, while prince Eadgar is absent in part of them, this part belongs most likely to one and the rest to another gemot.

once[4]; three gemots in one year are found five times[5]; that the witan met twice a year admits of proof in thirteen cases.[6] King Alfred[7] was then fully justified in regarding witena gemots as something frequently recurring. In the last 140 years before the Conquest there are less than forty without any recorded witena gemot. Considering the number of undateable records and the amount of material that has perished, we may safely conclude, that a witena gemot was held at least once a year and probably oftener.

Christmas, easter, and whitsuntide were the seasons when the Conqueror kept court with his barons and wore his crown.[8] Geoffrey of Monmouth[9] about 1130 dates this Norman custom indeed from Celtic antiquity; but he is wont to employ such fiction not only with regard to pre-Norman institutions. If that periodicity had existed before 1066 in real life or in theory, the Anglo-Saxon annalist would not have noted it among William's characteristic features.[10] It certainly cannot be pointed out for any year under Anglo-Saxon rule. But just as William in his rule about the three meeting places partly availed himself of old English custom, so did he by this innovation, though entirely like the Franco-Norman periodicity, at least not quite contradict English usage. For, counting a few days[11]

[4]) a. 931 Bi 674 sqq., at 4 different places.

[5]) a. 811 (Bi 335. 338. 850). 934 (Bi 702. 704 sq.). 977 (Flor. Wig.). 1016. 1051 (Ann. Agsax.).

[6]) a. 664 (Eddi; Whitby). 792 (Bi 264. 848). 932 (Bi 689. 691). 942. 948 (Ann. Agsax.; Bi 860 sqq.). 949 (Welsh and North English princes in Bi 882 sq., another list of witnesses in Bi 875 sqq. 879 sq. 1345). 956 (above n. 3). 970 (Walmer, Acle). 993 (Gillingham, Winchester). 998 (Ann. Agsax.; Ke 702). 1012 (Ann. Agsax.; Ke 1307). 1042 (Ke 765 sq. 1332). 1052. 1065. 1066 (Ann. Agsax.). A gift of land at christmas was completed by the surrender of the 'book' at easter a. 863 Bi 510.

[7]) *Gesetze,* Einl. 49, 8.

[8]) Below § 66.

[9]) VIII 19. IX 8.

[10]) *Willelmus consuetudinem induxerat*; Will. Malmesbur., *Wulfst.* II 12 ed. Migne 179, 1754.

[11]) a. 739. 928 Bi 1331. 663 sq.

before or after the holiday as belonging to it, we find those three highest church festivals to be by far the most frequent on which gemots can at all be dated: 24 gemots assembled at easter[12], 20 at christmas[13], and 7 at whitsuntide[14], altogether more than half of all those 90 instances in which days have been recorded to us. Almost[15] all the rest of assembly dates[16] occurs only once each. It was, therefore, the usual, if not legal custom to summon a gemot either at christmas, or at easter, or at whitsuntide; nor is it impossible that the assembly in some years met thrice annually, viz. at those three terms; but it is not likely that this occurred often. Though lawsuits were forbidden on high festivals, and though priest and abbot ought to keep aloof from laymen's assemblies on holidays[17], the witan deliberated and transacted all sort of business on those days, judgment

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[12]) a. 685. 801. 808. 835. 840. 854. 857. 864. 930. 934. 949. 968. 970 Bi 303. 326. 413. 430. 468—76. 492. 510. 669. 738 sq. 876. 1219. 1265 sq.; c. 944 I Eadmund; a. 997 Ke 698; a. 977. 995. 1012. 1020. 1043 Ann. Agsax.; 1062 Flor. Wig. Cf. below § 47 n. 16.

[13]) *Gesetze* II 731 n. 1; a. 780. 813 sq. 825 sq. 833. 835. 841. 845. 847. 863. 931. 933 sq. 937. 964 Bi 239 sq. 349 sq. 389 sq. 410. 413. 432 sqq. 450 sq. 510. 691. 697. 705. 716 sqq. *1135; a. 1016 Cnut's succession; c. 1030 (Cnut's laws); a. 1060. 1065 Ke *809. *815. *824 sq.

[14]) a. 793. 823. 930. 934 Bi *265. 373. *701—5; a. 993. c. 1020 Ke 684. 1327; VI Æthelred Pro.

[15]) Lammas, the 1. August, fixed for the synod, occurs twice: a. 675. 811 Bi *36. 335 and five others too.

[16]) 26. Jan. 933 Bi 695 sq. 28. May 843. 957 Bi 442. 999. 7. June 930 Bi 703. 20. June 931 Bi 675. 23. June 1022 Ke 734. July 716 Bi 91; a. 1012 Ke 1307. 7. July 993 Ke *684. 24. July 941 Bi 765. 26. July 805 Bi 322. 27. July 816 Bi 358. 30. July 683 Bi 65. 19. August 825 Bi 389 sq. 30. August 932 Bi 689. August to September 695/6, Wihtræd's law. Sept. 747 Bi 174. 1. Sept. 831 Bi 400. 2. Sept. 1051 Ann. Agsax. 12. Sept. 934 Bi 704. 17. Sept. 680. 822 Bi 1330. 370. 21. Sept. 935. 1051 Ann. Ags. 22. Sept. 780 Bi 236. 29. Sept. 732/3 Bi *149; a. 788 Stubbs, *Councils* III 464. 6.—12. October 803 Bi 308 sqq. 15. Oct. 705 Bi 115. 28. Oct. 1065 Ann. Agsax. 30. Oct. 824 Bi 377 sqq. 12. November 931 Bi 677. 16. Nov. 845 Bi 449. 24. Nov. 723 × 40 Bi 153 25. Nov. 814 Bi 348. 29. Nov. 956 Bi 966. 7. Dec. 1004 Ke *709.

[17]) Synod. Clovesho a. 747, c. 13.

included. Also during lent[18] many a witena gemot was held.

The gemot of 997 was removed from Calne to Wantage[19], that of 1051 was adjourned for eighteen days and transposed from Gloucester to London.[20] Donations begun on one festival were sometimes completed at the next.[21] The duration of an assembly for several days, though not recorded before 1085, is to be supposed for some earlier gemots as well, since the few hours of daylight at christmas could scarcely suffice for reading and explaining in English several dozens of lengthy charters.

47. Summons[1] were necessary, as the place, and possibly the time of the assembly as well as the choice of members changed from year to year. No royal letters of summons from the Anglo-Saxon age have come down to us. Still it seems improbable, at least for the tenth and eleventh centuries, that government should have sent messengers with oral mandates only, either directly to the witan or to the royal district reeves. The latter method would scarcely have been practicable for the bishop or ealdorman, since he ranged above the reeve. — We need not assume that a specialised order of the day was previously proclaimed; analogy from ecclesiastical and later summons speaks rather against it; and charters describe the purpose of the gemot in very vague terms[2]: 'for the good of the commonwealth' or similarly. — The beginning of the gemot may have been religious. Analogy from heathen[3] and from later times would point to this. In the seventh and eighth centuries the assembly was often mingled with the eccle-

[18]) A. 930 sq. Bi 669. 674; a. 988 Ke 662; a. 1047. 1050 sq. 1055 Ann. Agsax.

[19]) Ke 698.

[20]) Ann. Agsax.; cf. a. 1095. 1126. In 980 the witan wandered from the Andover gemot to the consecration of Winchester cathedral; Earle *Swithun* 65.

[21]) A. 825. 835. 863 Bi 389 sq. 413. 510.

47. [1]) See above § 15 n. 6, p. 47, line 4 Cf. *Gesetze* II 724: *Vorladung*.

[2]) Cf. below § 53 n. 1.

[3]) Th. Sickel *Deutsche Freistaat* 38.

siastical synod[3], it always consisted to a large extent of churchmen, it deliberated sometimes in churches, it never ceased to betray a strongly hierarchical spirit. Positive proofs, however, are wanting. One of the arguments adduced concerns a provincial assembly, and the other is taken from the enquiry on the creed standing at the head of an archbishop's synod.[4]

Bishops and ealdormen had seats; that the rest were bystanders is recorded for the earliest gemots only.[5]

The king is said to have asked in 625 the first vote from the priest.[6] In charters and laws of the tenth century the archbishop[7] acts as the spokesman of goverment, or pronounces the judicial sentence.[8] A layman, but he also the chief wita, fulfils this office in 705, treating with the ecclesiastical power and declaring the will of the commonwealth of Northumbria.

The witan, with the exception of the churchmen, spoke English only, in spite of the Latin of most of the charters they have left us. Papal letters had to be briefly explained by the archbishop in 705[9]; Latin canons promulgated by the Roman legate in 786 were translated *Teutonice*; Anglo-Saxon had not yet differed much from continental Saxon. The laws retained their native tongue from Ethelbert to Cnut: a glorious exception among Teutonic nations.

The cooperation of the witan with the crown signified, as we have seen above[10], very often much more than a ceremony of confirmation. That they 'unanimously consented'[11], as Ethelred's charters contend, is a clerical form,

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[3]) Above § 20.
[4]) a. 778 Bi 291.
[5]) Above § 33, n. 5. § 42, n. 3.
[6]) Above § 6.
[7]) Above § 33, n. 11.
[8]) a. 804. 825 Bi 313. 386.
[9]) Eddi *V. Wilfr.* 58.
[10]) § 26 sq.; below § 60.
[11]) a. 995 sq. Ke 1291. 1312.

either altogether unreal or at best unveiling a theoretical ideal. A homilist[12] about a generation later inculcating political duties, warns the English not to get 'seduced by the devil to quarrels, such as he often effected in our assemblies before'. History records hot party struggles in the midst of the national assembly: it banished Godwin's family in 1051 and revoked this outlawry in 1052. When Godwin inclined to afford the help Denmark asked from England against Norway, he was outvoted by Leofric.[13] At the elections of kings the witan were divided in 975, 1014, 1016, 1035, and 1066. If votes were at all given singly, an archbishop or earl was sure to speak with a more powerful voice than a mere thane. Majority, therefore, though elsewhere gaining the day as in the jury[14] among equals, could not possibly decide here.

Teutonic peoples liked at all times to combine political and judicial business with feasting: it suffices here to mention the guilds. Royalty gladly availed itself of the occasion to shine, brilliantly surrounded (as they would be) by the princes of the whole country. The hallowing of the king 'with the witan's great joy' in 880 was probably then, as always later on, followed by a coronation feast such as is recorded for a. 956. Ethelstan's charters[15] expressly lay stress on the joyful banquet with which royalty entertained the witan. As some of them are dated on days which were not church festivals, the feast apparently appertained to the national assembly. Alfred's custom of giving money to his knightly followers at easter may possibly also be connected with a royal court festival.[16]

48. By Teutonic custom every court of law enjoys an especial protection of peace. The oldest English code proclaims at its head 'assembly peace'. Under it a crime

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[12]) *Wulfstan* ed. Napier 272.
[13]) Flor. Wig. 1047 sq.
[14]) *Gesetze:* II Æthelred.
[15]) a. 930—4. 937 Bi 677. 690 sq. 695 sq. 703 sq. 716. 818 sq.
[16]) c. 882 Bi 553. Cf. above § 39, n. 5.

costs doubly as much as if it had been committed on some other occasion. The same rule applies when the king summons his people to himself; but then he receives another fine for the violation of his peace. Why a special assembly protection, a remnant of republican times, was needed is easily to be explained. It was the gemot where the commonwealth required the most undisturbed peace; and just here previous private feud, especially blood vengeance, was sure to find its victim; and just here recent discussion or party strife threatened to break out into violent assault. The way to and from the gemot was also protected.[1] The wita as long as he was occupied in the assembly enjoyed several other kinds of protection besides, viz. those afforded by the king's presence[2], by the royal character of the locality where the meeting was held, and by the public function of a state councillor, or, as contemporaries would have expressed it, by the king's mandate. But he was not (as liberal theory formerly contended) safe against being arrested by command of government. Else the safe conduct would have been superfluous which Wilfrid obtained in 686[3] and Godwin in vain asked for in 1051, before they ventured to visit the gemot. Disobedience to the summons sufficed to condemn Godwin to outlawry.

Apart also from the gemot, the wita, though not nobly born or distinguished by property or royal office, merely because he used to be a member of the national assembly, enjoyed a particular protection for his person, house, and fortune.[4] An Anglo-Norman jurist[5], expressly referring to old English custom, furthermore assigns the criminal jurisdiction over *senatores* to the sole competence of the crown:

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[1]) *Gesetze* II 463: *Gerichtsfrieden*; the *Treuga Dei* (ib. 687) protected before the Conquest only visitors of synods.

[2]) Ib. 319: *blutig* n. 5.

[3]) The bishops, hindering the king from laying hands upon Wilfrid, did not deny his right to do so, but *in nostram promissionis fidem huc perrexit*; Eddi 47.

[4]) Ine 6, 2; Geþyncðo 1; *Gesetze* II 738 n. 8a; above § 41.

[5]) *Leges Henrici* 20, 3; cf. *Gesetze* II: *Gerichtsbarkeit* n. 12. 15.

a reservation that from Anglo-Saxon sources can be proved only with regard to king's thanes and bookland owners. Possibly the constant mingling of the wita with the aristocracy and the royal court sufficed to enhance his rank, just as the history of chivalry shows social distinctions growing into political privilege.

In spite of legal paragraphs and social custom however, a king's favourite, when the witan were assembled at Oxford in 1015, murdered the two leading thanes of the Anglo-Danish Five burghs. But the crime was not committed in the gemot itself nor in consequence of political dissension.

VII. 49. In one respect the witena gemot towered above the crown: it possessed the recognised power to elect the king, and it did on several occasions actually depose him. The election of the monarch, like that of other magistrates a remnant of republican times, is acknowledged in the ideal of Gautic kingship drawn by the poet of Beowulf[1], as well as in ecclesiastical documents, viz. the legatine synod of 786[2], which was confirmed by the lay power, the coronation ritual, and Ælfric's homily.[3] Among historians Ethelwerd[4], who as a prince of the royal blood would naturally rather incline to exaggerate the pretension of his kin to the crown, still calls Edward the Elder elected by the witan. In the majority of cases, indeed, when chroniclers mention the bare fact of a succession to the throne, they are silent about an election; but possibly only because this was self understood. In fact a series of instances[5] can be quoted sufficient to raise the practice

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[1]) Verse 1851.

[2]) c. 12; it excludes bastards from candidateship.

[3]) I 212, under biblical, but not Frankish influence; see *Gesetze* II 557.

[4]) IV 4.

[5]) Eadward I. see above n. 4; *Eadred electione optimatum* a. 946 Bi 815; *Eadwig gecoren* Bi 1064; 957 *eligitur*; 959 *electus* Flor. Wig.; *optimates Eadwardum* (II.) *elegerunt* a. 993 Ke 1312; *de rege eligendo*

of election beyond any doubt. It reaches from the seventh century to the very last year of the Anglo-Saxon period, when election was exercised twice or thrice. There are examples from Mercia[6], Northumbria[7], and Wessex.[6] The form of election need never have been disregarded, even when a king got his son recognised as future monarch, such as Offa did in 785[8], or when the last will of the dying king concerning his successor was expressed in terms that made the kingdom appear like a private heirloom.[9]

But the succession to the crown of England never was so freely elective as that of Germany, for instance, became after 1254. The choice of candidates rather was restricted to the princes of the blood royal. It is true that the contemporary writers, clergymen most likely influenced by the phraseology of ecclesiastical elections to prelatures, do not positively express this constitutional theory, though they clearly stigmatise the deviation from the royal house as an irregularity.[10] And exceptions to the rule occur indeed. The Northumbrian kingmakers were careful not to take their ruler from the kin[10] of his predecessor, who had been murdered by them and might be avenged on them, if his house continued in power. Nor did the last Anglo-Saxon king descend from Cerdic, while the force of conquest explains the election of the Danish and Norman foreigners, though in four cases a full grown prince of the

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inter primores dissensio Flor. 975. Likewise in 1016 December, 1039, 1042 (Quadrip. Arg. 12), 1066 three times. The rejoicing of the witan at the king's hallowing might also be of political import: a. 822 Bi 370; a. 973. 979. Cf. above § 47, last passage.

[6]) See below n. 14.

[7]) 'elected by the people' or 'created by some princes'; Bedae contin. a. 758; Simeo Dunelm. a. 796.

[8]) and the Westsaxon king before 900 and 924.

[9]) Cf. Chadwick *Ags. instit.* 361. Asser calls Æthelwulf's testament *epistolam commendatoriam*; did he consider it as not absolutely binding? Eadward II. was crowned, as *pater præceperat*, a. 975 Flor. Wig. The pretended last will of the Confessor played an important part in the successions of 1066.

[10]) *tyrannus non de regali prosapia* Asser 27.

Wessex dynasty could stand as a candidate. The witan returned twice to Cerdic's dynasty, when Swen and when his grandson died; and it was the revival of this old tradition that made people rejoice to see in 1154 the old line of kings restored in good queen Maud's grandson.

The earliest proof that the electors liked to adhere to the old stock of kings seems to occur in 659, when the ealdormen of the Mercians, after shaking off Northumbria's yoke, raised to the throne the eldest surviving son of their last monarch.[11]

The election sank into a ceremonial form, when the succession had been settled before the king's death[12], or when a firstborn, or (if the monarch had left no son) a brother, or a brother's son of his survived without a rival. But in fact the crown had often to be transferred otherwise. Ine, a distant relative of the late king, succeeded in his father's lifetime; the report that he was elected, though invented by a forger about 1200, may therefore hit the truth. Ethelbald with all his witan tried in 856, when his father returned, to retain all England and did keep Wessex according to the decision of the nobility.[13] Alfred was created king according to the wish of all the kingdom, as Asser tells us, though his elder brother's sons were living. He was succeded by his son, whom the witan supported against the pretender, one of the cousins just mentioned. Even Mercia made her separate vote audible in the election[14] and favoured once the younger brother of the Westsaxon king.[15]

While the regular compact between king and people was expressed by the coronation oath, disputed and divided elections encouraged the witan to wrest promises from the

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[11]) *levato* Beda III 24.

[12]) Above n. 8.

[13]) Asser 12 sq.

[14]) *Æðelstan of Myrcum gecoren*; Ann. Agsax.; *Eadwig in utraque plebe electus*; Mem. Dunstani.

[15]) *Myrce gecuron Eadgar* c. a. 961 Bi 1063; *Eadwi a Mercensibus et Northumbrensibus relinquitur, et Eadgarus rex eligitur*; Flor. Wig.

candidate. As early as 786 a pretender tried to gain over, by money and land, the partisans of the king whom he had murdered. From 975 to 1066 the succession was six times disputed.[16] In 1014 Ethelred had to promise public reforms, in 1042 the Confessor vowed Cnut's constitution[17]; no doubt both these promises were given to the witan.[18]

The exclusion of bastards from the crown had been enacted by the legatine synod of 786, which, though addressing king and nobles, and signed by the aristocracy and magistrates, never seems to have gained the validity of secular law. As a matter of fact a bastard did ascend the Anglo-Saxon throne, as that of many a Teutonic people in early times, in more than one instance, lastly in 1066.

50. The choice the witan had to make among the possible candidates for the crown presupposes the authorisation to exclude rivals, who according to the law of inheritance might stand nearer to the throne. While as a rule these princes of the blood were silently passed over, they were once, in favour of Danish Cnut, expressly deprived of their right of succession: if at all the report is true[1], the act required the authority of the witan.

The oldest instance of the deposition of a king is offered by Wessex in 755. Clearly a legal act by the constitutional organ of the commonwealth, and not a sum of treacherous deeds of violence committed by individual nobles, is meant by the annalist: 'Cynewulf with the West-saxon witan deprived Sigeberht, his kinsman, of his kingdom, for his unrighteous deeds, leaving him only Hampshire.' — Mercia furnishes but one doubtful example of a dethronement. That Offa expelled his predecessor is indeed a well

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[16]) Also a. 1012. 1014. 1016. 1035.

[17]) Quadrip. Arg. 9.

[18]) In 1020 Cnut wrote to England, she would remain safe from Danish invasion as long as she remained true to him.

50. [1]) Hodgkin *Hist. of Engl.* I 400.

ascertained fact. If, however, a Saint Albans chronicler almost five hundred years later combines it with an assembly of nobles and commoners, he may have simply invented this addition in order to justify Offa, the founder of his monastery.[2] — Though the Northumbrian succession to the crown in the eighth century is often enough irregular, the cooperation of witan is but rarely recorded. Some legal form of recognition however could scarcely be evaded, if the late king had not as usually been murdered, but only expelled. In 765 king Ethelwald, as the annalist says, lost his kingdom on the 30th October at Finchale. Professor Oman[3] is right in seeing behind these short words a legal deposition of the king; the exact date and the place, where synods liked to meet, are sufficient arguments for the supposition that here also a witena gemot was acting. Another king was in 774 'deprived of counsel and consent of all his royal *comites* and of the companionship of his princes'. To deny[4] here to this plural its meaning of the corporate body of the witena gemot seems hypercritical indeed. Probably, though less clearly, the witan cooperated also when king Ethelred was exiled from Northumbria and when in 790 he was reinstated, while Osred was dethroned 'by his princes': this last expression might possibly mean a palace intrigue and not necessarily a legal decision.

In theory Ælfric[5] distinctly denies the right of deposition: the people may choose their king; but as soon as he is consecrated, they must not shake off his yoke. The laws of course strongly condemn the desertion of the king, and admonish the nation to remain true to one king.[6]

51. This warning alludes to the splitting up of monarchy under Ethelred II. But the destruction at least

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[2]) Matth. Paris. ed. Luard I 342; cf. Plummer *Saxon chron.* II 48.
[3]) *Engl. bef. Norman conq.* 369.
[4]) Chadwick 363.
[5]) *Gesetze* II 557.
[6]) Ib. 556 n. 4.

of central government had occurred much earlier. In 626 and about a. 683 Wessex relapsed into the state of being ruled by ealdormen; as these were the chiefs of the witan, the desertion of monarchy as well as the return to it presupposes a cooperation of the national assembly. The division of the realm in 856 and in 1016 into two halves is expressly stated[1] to have been legalised by the consent of the witan. And the same is probable for a. 956.

52. Some witan administered the kingdom during Ethelred's minority[1] and in 1027 during Cnut's absence[2]; while in the former case the governing body may have been a committee appointed by the gemot, Cnut himself had entrusted his kingdom to the care of some counsellors.

During the interregnum it was most likely the tribal bishop and later on the archbishop who summoned the witan for the election of the king. At least he mediated between them and the candidate.[3] In order however to legalise the deposition of a king, the chief actor, the pretender, probably invited the witan; a glimpse of this possibly appears in the position of the annalistic words quoted above[4]: 'Cynewulf and the witan'.

VIII. 53. The competence of the national assembly under a king has not been determined by any contemporary writer. Records, indeed, describe its purpose often enough in loquacious verbosity; but the essence of what they say, partly in borrowed forms, is much too vague to help us: the witan are to care for church and clergy, crown and king, commonwealth and people, spiritual and secular welfare, peace and justice.[1] Large domains of their activity, military, financial, or foreign policy are not even

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[1]) Asser 12; Ann. Agsax.

52. [1]) a. 993 Ke 1312. Cf. above § 26 n. 6.
[2]) *Gesetze:* Cnut 1027, 11.
[3]) *Gesetze* II 557: Königswahl n. 7.
[4]) § 50, line 13.

53. [1]) A. 824 sq. 838. c. 896 Bi 378. 384. 421. 574. 582; a. 993 Ke *684. Cf. above § 47 n. 2; *Gesetze* II 470 n. 18 a; *Moral* 8.

mentioned. The list of the witan's functions, as we shall try to compose it from casual notes in the sources, may be very incomplete. Kemble[2] concludes correctly that no action of political import existed for which they might not be consulted. On the other hand, even those functions where their cooperation appears most clearly and most frequently are sometimes recorded as autocratic acts of the king alone. Though almost every single function could easily be construed as the development of a similar one ascribed by Tacitus to the republican assembly, and though none, church relations and booking of land excepted, bears the distinct stamp of monarchical creation, it would be rash to infer that they were derived from prehistoric times: the royalistic, clerical, and aristocratic constitution of the witan cannot but have deeply influenced their proceeding too. Furthermore, if the modern student catalogues all the functions in systematic order, he must carefully keep in mind, that their whole sum need not at all times, nay may never have belonged to any single assembly[3]; it is but a collection from hundreds of gemots ranging through four centuries. Without this general warning Anglo-Saxon polity would appear much more parliamentary than it really was.

54. Foreign policy was in many cases deliberated and decided by the witan. When in 705 Essex and Wessex had to settle a treaty, kings, bishops, abbots, and judges (i. e. magistrates) of both parties were gathered.[1] In 853[2] and 868[2] the king and witan of Mercia asked Wessex for help against the Welsh and the Danes. Alfred's treaty with Guthrum[3] was concluded by England's witan and the people of Eastanglia. The peace broken by Northum-

[2]) *Saxons* II 204.

[3]) In one year the witan possibly helped to nominate prelates or to settle lawsuits, while the crown alone ruled foreign and military policy; in the next year possibly just the reverse might be the case.

54. [1]) Bi 115.

[2]) Ann. Agsax.

[3]) *Gesetze* I 126.

bria in 911[4] had been offered to her by Edward the Elder and his witan. The Anglo-Welsh relations in the Dunsaete-district[5] were ruled by England's witan and the state councillors of the Welsh nation. The witan of Northumbria made amends to king Edred for their breach of peace in 948.[4] For the peace with Normandy, mediated by a papal nuncio in 990, all England's *sapientiores* were convened.[6] Another peace, that with the army under Olaf of Norway[7], was also concluded by king and witan. From 1002 to 1011[8] we hear on five occasions that the power which bought peace from the Danes was king and witan; the latter are separately mentioned in the message sent off to the enemy. Denmark's request for a navy against Norway was in 1047[4] declined by all the people. Godwin and Harold, after the Welsh invasion, intended personally to ask help from king and witan.

55. The foreign relations of the heptarchic states with Rome and Canterbury were also determined under the influence of the witan. The conversion to christianity required the witan's consent.[1] Later on Northumbria's resistance to the Roman decisions favouring Wilfrid[2], the punishment for his appeal from her judgment to Rome, finally the compact with him: all these acts are expressly described to us as deliberated upon and approved by royal counsellors, courtiers, bishops, and witan.[3] Papal privileges for a Northumbrian monastery were publicly confirmed in a 'synod', i. e. a witena gemot, by the subscription of king and bishops.[4] Nor does a Peterborough forger of the eleventh century consider the confirmation of a papal bull

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4) Ann. Agsax.
5) *Gesetze* I 374.
6) Letter of John XV, ed. Stubbs *Mem. Dunstan* 397.
7) *Gesetze*: II Æthelred.
8) Ann. Agsax.; also 1004. 1006.

55. 1) Beda II 13. III 29; above § 6.
2) Below § 61 n. 10.
3) A. 680. 702. 705 Eddi p. 24. 34. 43. 47. 58. 60; Obser *Wilfrid* 51.
4) About 701; *Hist. abb.* auct. Beda ed. Plummer I 380.

by a witena gemot to be unusual; he invents it for the benefit of the privilege of his monastery.[5] — The king of Mercia was backed by his witena gemot when he declared, about 820, in his quarrel with the archbishop of Canterbury, that he would not care for the intercession of pope or emperor[6], to whom the archbishop seems to have appealed. — It was with the counsel and permission of all the witan of Wessex and Kent that Cerdic's house concluded the concordate with Canterbury in 838.[7]

56. But the national assembly interfered also with the inner life of the church.[1] In the struggle between the secular clergy and the monks[2], after 975[3], the witena gemot sided with the latter, prevented their expulsion and helped them to replace the seculars in some cathedral chapters.[4] The convent of St. Edmund's professed[5] to owe its monastic character and its exemption from the diocese to king and witan. Lay abbots, says Bede in 734[6], who had wrongfully got land booked to them by the witan, ought to lose it in favour of bishoprics by a rectified decision of the gemot. It was with the consent of the witan that Northumbria in 678[7], Mercia in 679[3], and Wessex under Edward the Elder[8] (as saint Dunstan reports without betraying the slightest sign of canonical disapproval) were divided into several bishoprics, and that the Confessor fixed the Devon cathedral at Exeter.[9] This organisation of

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[5]) Ann. Agsax. 675.

[6]) Bi 384 sq.

[7]) Bi 421.

56. [1]) Cf. above § 17.

[2]) King Eadgar [as Christ's vicar, cf. *Gesetze* II 549 n. 6 a] enjoins the monastic rule without mentioning the witan, who, in spite of the caesaro-papistic view of the court clergy, did not fail to mingle with the monastic question.

[3]) Flor. Wig.

[4]) a. 998 Ke 702.

[5]) c. 1040. 1050 Ke *761. 895. 910.

[6]) *Ad Egbert.* 5 sq.

[7]) Stubbs *Councils* III 125.

[8]) Stevenson *Crawford char.* 103.

[9]) a. 1050 Ke *791.

dioceses, deviating from Gregory the Great's enactment, followed political regards and tribal frontiers. The Mercian king with his witan restored Canterbury's whole province after the independence of Lichfield had been revoked.[10]

The cooperation of the witan in the creation of bishops and abbots[11] is indeed mostly hidden unter the dry report of the bare fact of the prelate's succession; on other occasions the king alone[12] is mentioned as the nominating power. But half a dozen cases where the witan appear, do not look like exceptions[13], but seem rather to be the more accurate expression of normal proceeding. Wilfrid was elected for York by the kings in a council *cum sapientibus.*[14] Bishop Helmstan of Winchester, in his profession made to Canterbury, names optimates and people as his electors.[15] Saint Dunstan received London 'at the request of king and princes'[16], and later on Canterbury 'with the counsel of the witan'[17]; his letter testifies[18] how the king gave to a bishop about to be consecrated the episcopal land according to the witan's counsel. Oscytel was in 950 consecrated for Dorchester, and in 958 for York by the grant of king and witan.[19] Ælfric was nominated for Canterbury in 995 by king and witan.[19] It was at a witena gemot in 1051 that the Confessor gave away the bishoprics of Canterbury and London[19]; and at that of 1044 the abbot of Evesham was elected[20]: in these cases the gemot, if it did not cooperate, gave a sort of confirmation

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10) Bi 310.

11) *Gesetze* II s. v. *Bischof* n. 2.

12) Ann. Agsax. 1013: *cyng gesætte Lyfing to þam arcestole.* Cf. Æthelwoldi *Regul. conc., Pro.: abbatum electio regis consensu.*

13) I do not rely upon the words 'elected by all the people', which may be a clerical phrase.

14) Eddi c. 11 sq.: *conventus, populus.*

15) a. 839 Bi 424.

16) Osbern ed. Stubbs 105.

17) Ib. 38. Flor. Wig.

18) c. 984; *Crawford char.* 106.

19) Ann. Agsax.

20) Flor. Wig.; cf. 1062: Wulfstan of Worcester *coram optimatibus.*

or at least of publicity to the governmental act arranged beforehand. — It is expressly against this share of the lay power in the nomination of prelates that a Canterbury canonist about the end of the eleventh century, not yet hinting at canonical election, vindicates for his archbishop the appointment of bishops and abbots: this local patriot might base such an imaginary privilege upon the archbishop's position at the head of the witan.[21]

Homilists of the beginning eleventh century felt no objection to the witan, laymen included, prescribing penitence and penalties in favour of churches[22]; and archbishop Wulfstan inserts into his translation of Ethelred's law a line, saying that all the optimates discussed the cult of catholic religion. In the actual laws and charters the witan not only protect the persons of the clergy, their income and privilege against secular encroachment and public taxation[23], they not only command the building and endowing of churches, but they also enforce moral and religious duties generally[24]; furthermore, according to canonical law they enjoin specially the sanctity of the oath[25], christian marriage, holidays, fasting, and the reception of the sacraments. Nay, they deal even, not without distinct threatening of punishment, with the canonical life of the clergy, their celibacy, the expenditure of their income[26], the sacramental duties of the priest, the election of abbesses[27], and the consecration of nuns. King and tribal bishop, most likely representing the witan, may even legalise the marriage of a consecrated nun.[28] The means with which the witan threaten offenders are not restricted to secular punishments, but include penitence, excommuni-

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[21]) *Gesetze* II 314 n. 2 g = c. a. 710 Bi 91.
[22]) About 1030 [Pseudo] Wulfstan ed. Napier 170—3.
[23]) A. 696 × 716 Bi 91.
[24]) King and witan are to meditate how people shall obey God; Polity 2.
[25]) *Gesetze* II 543 n. 22.
[26]) *Gesetze* II 536: *Kircheneinkünfte.*
[27]) Synods a. 742. 749.
[28]) *Gesetze* Ælfred 8.

cation and the loss of christian burial. — It was, therefore, not at variance with the relation between church and state under the Anglo-Saxons if the London forger about 1200 fabricated a papal letter[28], according to which the king of Britain ought to rule the church as papal vicegerent, aided by the counsel of his reign.

57. That the witan took part in the governmental nomination of ealdormen[1] must, in spite of the inadequacy of evidence, be inferred from their influence on the filling of episcopal and abbatial chairs[2] as well as of military offices[3], and from the anxious desire of the aristocracy to see the most powerful posts conferred on their friends. If the Anglo-Saxon annalist says in 1051: '*man* created Leofric's son an earl', he most likely implies that not the king alone nominated him. In 1052 Godwin and his party regained their earldoms in consequence of the decision of a witena gemot: a complete change of ministry, to speak in modern terms, ensued. In 1064 the Northumbrians expelled earl Tostig and chose Morcære instead; in vain Harold tried to reconcile them to his brother Tostig on 'great gemots', which, however, even if continuing the once independent Northumbrian assembly, were not national councils of all England.

58. The military duty assessed on real property may have been one of the ultimate reasons why the witan carefully watched that the crown did not exempt booklands from the threefold public burden. Nor did their legislation disregard army and navy.[1] — They were in 898 consulted by Alfred on the reestablishment of London.[2] They are expressly named as helping to call out the military force of the country on seven occasions between 992 and 1052[3],

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[28]) Ibd. I p. 636.

57. [1]) *Gesetze* II 360 n. 5 c. 8 c. 10 b.
[2]) Above § 56, n. 11 sqq.
[3]) Below § 58, last line.

58. [1]) *Gesetze* II: *Heer; Schiff.*
[2]) Bi 577.
[3]) Ann. Agsax., also 999. 1010. 1016. 1047.

and they may often be meant behind the indefinite subject *man*[4] as cooperating with the king in the same function. The responsibility for the rash dismissal of the navy in 1009[5] is thrown on king, ealdormen, and 'highwitan'. The witan are said to have warranted security for the Danish inhabitants in order to induce Cnut to send home his Danish troops.[6] The commanders of the navy in 1052 were appointed by king and witan.[5]

59. The witan influenced also the finance of the country. They legislated[1] about it, and their consent had to be asked, when the crown wished to give land away or to exempt it from public burthens[2], even if for the donor's lifetime only.[3] They also sometimes confirmed the forfeiture of land to the king.[4] They regulated, as we have shown above[5], the ecclesiastical income, tithes among other things. The introduction of these latter into law is, however, attributed to them not earlier than about 1130.[6] King and witan decreed the heavy Danegeld, no doubt on all occasions, though we are expressly told so only seven times[7]; elsewhere the king alone is mentioned, meaning government.[8] The abolition of the Danegeld was also enacted with the consent of the witan in 1051. The liberal Cityman, who about 1200 attributes to the witan the grant of all taxes, seems influenced by the programme of the future Magna charta.

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[4]) 1008, distinctly expressed in the record Ke 1305.

[5]) Ann. Agsax.

[6]) Leges Edw. Conf. 16 sq.

59. [1]) *Gesetze* II s. v. *Finanz.*

[2]) Bi 162 A. 178. 204. 234. 502. 506. 525. 1153. 1157. 1201. 1216; Ke 641.

[3]) a. 749 Bi 178; cf. below § 60, n. 10.

[4]) Below § 61, n. 17 sq.

[5]) Above § 56, n. 23.

[6]) Leges Edw. Conf. 8, 3.

[7]) Ann. Agsax. a. 991. 1002. 1011 sq.; a. 994. 1007 Ke 702. 1303 sq. In 1004 the East Anglians act autonomously: an heptarchic tradition.

[8]) a. 1014. 1017. 1041.

60. Legislation was not possible without the witena gemot.[1] A gnomic poet, about the year 800, sees the witan's chief task in defining law: reviewing human nature differently gifted, 'one', he says, 'is able to devise folklaw in the assembly of sagacious men, where a crowd of witan is together.'[2] While this function is but rarely mentioned in the charters[3], the laws as a rule profess to have been confirmed by the witan, except in a few cases where either the prologue has been lost to us by a mutilation of the text, or the form of the promulgation designates the enacting power but briefly and inaccurately.[4] Alfred introduces[5] his code with the words: 'I have collected the following from old laws, altered much with my witan's counsel, and shown it to them, who approved it.' It is therefore exactly correct, if he, meaning the witan with himself, speaks in the first person plural. Anglo-Saxon lawgivers speak so frequently. But where the king relapses into the singular, designating himself alone, he does not by this change of form pose as an autocrat. The whole body of Anglo-Saxon laws appeared to their collector in 1114 as 'decisions of the witan.'[6] Another legal writer under Henry I. ascribes to the witan even those old English institutions for whose origin legal sources are unknown, such as tithing and frankpledge.[7]

As a rule the witan simply consent[8] to the bills proposed by government, and no trace exists that they ever tried to modify them. But they did not lack altogether the initiative power. Ethelstan consents to what the witan

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[1]) Cf. above § 26.

[2]) *Be mannes cræftum* 41; cf. Brandl in Paul *Grundr. German. Philol.*[2] 1036.

[3]) *conventio publica, conloquentes de necessariis gentis* [Merciorum] *statutis* a. 884 Bi 552.

[4]) E. g. Earconberht's religious laws; Beda III 8.

[5]) Einl. 49, 9.

[6]) *sapientum diffinitiones* Quadripartitus.

[7]) Leges Edw. Conf. 28; cf. *Gesetze* II: *Zehnerschaft.*

[8]) Above § 26 sq. 47; *a rege edicta optimates spondebant* VI Æthelred 40, 2; cf. *Gesetze* II 469.

instituted, or confesses the motive of his police reform to have been 'because my witan said, that I have too long tolerated the disorder.' The doctrine that a king by himself could give ordinances for his lifetime only, but required the consent of nobles for permanent legislation, does not emerge indeed before the twelfth century[9]; a royal exemption, however, from public burthens during the donor's lifetime occurs as early as 749.[10] All those laws, by which the crown protects the poor against the interest of the lords wielding private jurisdiction[11], may have often enough aroused the witan's resistance.

The confirmation of a former constitution forms but a kind of legislation. It was in national assemblies that Edgar's laws were confirmed in 1016 and 1018, those of Cnut under the Confessor, the so called good laws in 1052, and the Confessor's constitution under Norman kings.[12] — The abolition of laws depended also, as Alfred expressly says, on the witan.[13]

61. The witena gemot did not interfere with the king's power to pardon criminals[1], or to supply equity where strict law seemed too heavy[2], or to command the local courts by his writ to settle the litigation between two parties.[3] But it must be institutionally distinguished also from the king's judicial court[4], to which the plaintiff could apply who at home in the local court had not been able to obtain a judgment or its execution, and of which 'the king's

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[9]) *Gesetze* II 477.

[10]) Above § 59, n. 3.

[11]) *Gesetze* II 470.

[12]) Ibd. 738 n. 13; below § 67, n. 8, 9.

[13]) See preceding page.

61. [1]) Not to Anglo-Saxon, but to canonical law belongs the sentence *Qui occiderit episcopum sit in arbitrio principis et episcoporum;* Leges Henr. 68, 6.

[2]) *Gesetze* II 313 c. *Billigkeit* 524; *Instanzenzug* 2. 4 d. 5.

[3]) Ibd. 482 n. 5 a.

[4]) Here also usually the king alone is mentioned, but a court is clearly to be understood. The synod also sometimes acted as a secular court of law; see above § 19, n. 6.

officers-court'[5] seems to be a vassals' department, settling, on the only occasion where it occurs, a litigation on bookland between high nobles. In practice it may have been difficult even then to draw the line between witan and royal court of justice, as both were paramount, presided over by the king[6], and occupied with important lawsuits of the aristocracy or with arbitration between them[7]; and both employed witan for doomsmen. The competence over bookland and its owners, though by certain laws reserved to the king, clearly belongs also to the witan according to many charters. We may, therefore, hesitate in more than one instance, before deciding, which of the two courts is meant. The witan[8] — either of the national assembly or of the king's court[9] — shall determine the severity of the oath by which a man, impeached for an attempt against the king's life, is to purge himself. Again, Godwin's purgation from the responsibility for the execution of the king's brother may have gone forth in the king's court of law or at the gemot banquet.

The earliest recorded lawsuits before a witena gemot are the fourfold proceedings against Wilfrid in Northumbria a. 678—702. The tribunal is called royal, but bishops, princes, people are present.[10] Another bishop, the metropolite of Canterbury, was threatened with spoliation and banishment by a Mercian witena gemot in London about 820 and could avoid the sentence only by a heavy fine; another witena gemot in 825, however, gave him back whatever he had lost, with as much again as amendment for the robbery.[11]

The attempt to murder the king with his witan having

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[5]) *cinges þeningmanna gemot* c. 970 Bi 1296.

[6]) Or during his absence by his delegates; Cnut 1027, 11.

[7]) *Gesetze* II 636; *Schiedsgericht* 1 c. 9 a.

[8]) V Æthelred 30.

[9]) Since high treason or conspiracy is an aristocratic crime, we must not think of a local court.

[10]) Though not all these factors are clearly named on every occasion.

[11]) Bi 384 sq.

been imputed to the Danes, the plan of killing all the Northmen in 1002 is attributed to the 'counsel of optimates and satraps.'[12] Surely not the public witena gemot, but the privy court council would have been the only possible place to broach such a conspiracy, if the tale were at all true.

On ten occasions from 993[13] to 1065 king and witan outlawed several magnates. Though the motive in almost every instance was party strife, the form of judicial sentence need not be doubted. The king by himself could revoke outlawry; but the witan cooperated; when in 1052 Godwin and his house were 'inlawed.'[14] — About 997 the crown was going to impeach Ætheric of high treason before all the witan[15]; these gave judgment whether his testament ought to stand. — About 961 king and witan pronounced two men guilty of bookland robbery.[16] In other cases the witan judge the land of criminals to be forfeited[17], or the bookland of a childless intestate to fall back to the crown.[18]

Civil litigation could, but must not necessarily, come before the witena gemot, if it concerned the king or the aristocracy or bookland[19], while hundred and shire court settled the lawsuits between commoners and those about folcland[20] or chattels. Even Welsh kings[21] are said to

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[12]) A. 1004 Ke *709.

[13]) Ælfric (Ke 702. 1312); 1002 Leofsige (Ke 719); 1016 Eadwig, king Æthelred's son, 1020 Æthelweard, 1046 Osgod Clapa, 1049 Swegn, 1051 Godwin, 1052 Godwin's Norman adversaries, 1055 Ælfgar, 1065 Tostig. The witan alone without the king are sometimes mentioned as outlawing; *Gesetze* II 414 n. 4 a. e.

[14]) Ibd. 416 n. 17.

[15]) Ke 704.

[16]) Bi 1064.

[17]) A. 937 sq. 950 Bi *670 = *719. 727. 1063; *Gesetze* II 712; *portio terrae fornicaria mihi vulgari subacta traditione* can however mean a confiscation by a provincial court.

[18]) a. 825 Bi 390.

[19]) A. 794. 798. 804. 844. 896. c. 961 Bi 269. 291. 313. 445. 574. 1064; a. 999 Ke 703.

[20]) Cf. Vinogradoff *Engl. soci. in 11th cent.* 92.

[21]) c. 959 Bi *1350.

have pleaded before the English witan. Prelates here in several instances sued the crown, or her officers, or one another, or lay noblemen.[22] King Ethelwulf's sons made before the witan a compact and a division concerning their inheritance; and when later on a litigation arose, in course of which the testament of the father was proved there, king Alfred gave the witan his formal promise, that he would not do harm to any one who would pass a judgment unfavourable to him. — The witan[23] were able to summon a party before their court. The bishop of the diocese where the land in question lay, was to get one copy of the witan's sentence and the party concerned another.[24]

When the Anglo-Saxon wanted legally to acquire chattels rising above a small limit of value, he required witnesses. The conveyance of real property had to be attested by the district court of law. But the national assembly gave the widest publicity and the highest authority to acts it recorded; aristocrats, therefore, applied to it in order to get their business transactions in land confirmed against the possibility of future contesting.[25] The documentary sale, or exchange, or gift of land is in many instances attested by a long series of witan, sometimes at the place and on the day of an assembly, nay expressly with its consent.[26] Even a merely temporary gift of property from a bishopric to its thanes, the *læn*, is so attested.[27] — The witan renewed also charters about land or

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[22]) a. 825. 840 Bi 386. 430; c. 1020 Ke 1327.

[23]) *conscientia synodalis* a. 804 Bi 313. The spokesman's and judge's part see above § 47, n. 8.

[24]) a. 816 Bi 358; the paragraph saying so is left out by Birch.

[25]) A duke's testament confirmed by the witan: c. a. 880 Bi 558. Some testaments about bookland do, however, not apply to king or witan.

[26]) A. 798. 859. 868. 875. 949. c. 961. c. 966 Bi 291. 497. 519. 539. 877. 1064. 1131; a. 990 sq. c. 1012. 1022. 1052. c. 1054 Ke 714. 898. 733. 797. 901. A royal prince requests the witan to promote the validity of his testament a. 1015 Ke 722.

[27]) C. a. 874. 961 sq. 964 Bi 543. 1077. 1091. 1136; a. 1042 Earle 242 and Ke 764. Mostly, however, king and shire-ealdorman confirm the *læn* (a. 963 Bi 1105—11), or it remains unconfirmed; *Gesetze* II 323, col. 3.

privileges that had accidentally been lost.[28] The documents attesting the change of ownership between private parties form a large share among the whole amount of witan records.

62. But by far the largest mass of records, nay, perhaps of all Anglo-Saxon written remains, are 'landbooks', i. e. royal charters about land booked by the king to a subject[1] or to himself[2] with the witan's consent.[3] The differences of bookland over against folcland are manifold. Bookland is the most coveted sort of ownership. It lasts eternally[4], neither needing, when the present possessor dies, a confirmation by the crown, nor acknowledging a superior lordship of soil or of jurisdiction. It comprises, in reality, though perhaps not in institutional theory, at least one manor and is owned by at least a thane. Though the first receiver of bookland, if a layman, is mostly a king's vassal, the heir or buyer, to whom he will leave or sell it, need not depend on the crown in person or in tenure; nor does the land by being booked owe a special military service: important contradistinctions to later feudality. It is rather, as a rule, liberated from public burdens, except the so called threefold necessity.[5] It will, however, be forfeited or escheat to the crown, if its owner is outlawed or dies intestate without heirs, even though he be under vassalage

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[28]) A. 903 sq. 964 Bi 603. 606 sq. 1148. 1157 sq.

62. [1]) The occupation of land even by a royal prince was stigmatised as illegal, because lacking the witan's license; Ann. Agsax. 900.

[2]) *Gesetze* II 327 n. 19 sqq.

[3]) Cf. above § 27. A list of charters booking land by consent of the witena gemot picked out at random: a. 723 × 37. c. 740. 745. 749. 759 × 64. 766 × 70. 774. 778. bef. a. 788. 798 sq. 805. 811. 823. 838. 841 sq. 847. 867. 931. 948. 955—8. 960. 963 sq. 961 × 9. 967 sq. 972 Bi 157. 165. 170. 178. 194. 200—4. 213. 224 sq. 260. 291. 293. 321. 332. 335. 373. 421. 437 sq. 451. 1210. 682. 869. 906. 917. 926 sq. 958 sq. 964. 1009. 1041. 1055. 1058. *1319. 1119. 1143. 1173. 1199. 1213. 1285; a. 987. 993. 999 Ke 657. 1312. 703. Charters about land exchanged with the crown under the witan's confirmation: a. 781. 812. 973 Bi 240 sq. 341. 1294.

[4]) King and witan may, however, revoke gifts of their predecessors.

[5]) *Gesetze* II 326 n. 16 sq.

and jurisdiction of a noble. The principal point of difference, however, is that bookland may, in contradistinction to folcland descending to the born heirs in spite of the possessor's wish, be freely[6] disposed of, either by gift and sale or by last will, in so far as the original book of the first receiver had not limited the circle of possible future owners; such limitation could be overruled only by the consent of the expectant kin.

In many cases the receiver of a landbook had possessed the property before, in other words the land did not change the owner, but only the sort of ownership. If this was not combined with a special immunity, the commonwealth had to fear by the booking[7] only the possible eventuality of the land falling into mortmain by the pious testament of this or a future owner. The same suspicion might in some cases induce the lay aristocracy to check the booking of crown land to subjects. We must, however, confess, that the lay witan, though individually greedy enough for property and power, as a body never betray a waft of secularising tendency against the accumulation of ecclesiastical wealth. But a more general reason for the interference of the aristocracy is not far to seek. One notion[8] comprised indissolubly king's folkland and national property administered by government[9]; the witan, therefore, had to guard the disposition of crown domains against reckless squandering[10], which would deprive future governments of the possibility of rewarding out of public property warriors and officers, probably the descendants of the now dominating class. They controlled the giving away of crownland, not as a circle of personal associates and vassals of the king, but as a national representation. To be a good

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[6]) But see ibd. 325 n. 6 g. i.

[7]) That this invention favoured the acquisition of church property see *Gesetze* II 323: *Boc* 2 a.

[8]) The names are *terra iuris mei, publici iuris,* king's folkland; a. 841 Bi 437; *Gesetze* II 327 n. 22 e.

[9]) Vinogradoff in *English hist. rev.* 1893, 13.

[10]) Stubbs *Const. hist.* I 131.

'treasurer (hoardguardian) of the heroes', i. e. a conscientious administrator of the public means for national, chiefly military purposes, is in Beowulf[11] the ideal required by the Gauts from the king whom they elect.

The earliest landcharter that has been preserved, not counting spurious documents since 604[12], dates about 674. Kent, Mercia, Sussex, Wessex are the states where our charters originated. But they existed quite as early[13] in Northumbria likewise.

The king himself had, next to God, to thank his witan's decrees for his property.[14] He might mean the lands forfeited or escheated to the crown by the witan's judgment.[14a] But more likely he alludes to the lands booked by the king to himself[15] with the consent of the national assembly; not before this legal transmutation of one sort of ownership into the other could he freely dispose of the land according to his own desire. A king's gift of property that was not bookland, even though the donor was an Edgar and the receiver a monastery, lacked validity as missing the witan's consent.[16] — The exemption from public burthens for a certain property, or the confirmation of such a privilege wanted also the witan's consent.[17] This is to be supplied, even in those cases were the charters do not expressly mention it, from the character of the donation touching political rights of the commonwealth, or from the witnesses being identical with witan.[18]

The way in which a landbook was prepared, consisted most likely in the private transactions between donor and receiver, and secondly in the request brought by the receiver

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[11]) Verse 1851 sqq.

[12]) Bi 32. 45. 67. 85. 102. 132.

[13]) *Gesetze* II 323: *bocland* 2 a. 6 d; above § 28, n. 1. 3.

[14]) C. a. 995 Ke 1312. [14a]) Above § 61, n. 17.

[15]) Above § 28, n. 9; before a. 796. 847. c. 902. 963 sq. 968 Bi 291. 451. 605. 1118. 1127. 1215.

[16]) C. a. 995 Ke 1312.

[17]) C. a. 800. 964. 968 Bi 201. 1157. 1219; a. 1018 Ke *735.

[18]) C. a. 691. 697. 701. 732. c. 954 Bi 75. 97 sq. 103. 148. 902; a. 982 sqq. c. 988. 990 Ke 1278 sq. 1281. 1284 sq.

before the royal court council, either to draw out a charter in his favour, or to approve the content of the parchment leaf he presented himself ready made. Later on, when the witan would assemble, they would find a whole bundle of such prepared charters to be confirmed and signed all at once.

IX. 63. In the history of England's national assembly the Norman conquest makes the first incision.[1] Almost every single feature was radically changed; nevertheless the continuity between the witena gemot and the Great council is a tenet decidedly to be upheld.

The Anglo-Saxon annalist and five great historians of England, whose fathers had been born before or about 1066, do not betray the slightest hint of any break in the development of the assembly. Nor does any law, any charter, or the juristic literature under Henry I.[1a] Much less do they describe the Great council as anything newfangled or French or Norman. The name *witan* or *sapientes*[2], not usual in France or Normandy, continues to be used for it.[3] Nay, the Conqueror's own charter professes to give land by the witan's counsel.[4] The word *witena gemot* is still used by Layamon, a generation after *parliament*[5] has first appeared with another historical poet, Fantosme. The nobles are often, but not always, called *barons*; quite as frequent remains the old name 'princes' or 'magnates'. 'Court'[6] and 'Great council' begin indeed to prevail[7] after the Conquest, but they are forestalled by

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[1]) But see above § 5 sq. [1a]) *senatores* Leges Henr. 20, 3.

[2]) *þe wise men* Ann. Anglosax. 1140; *te ricce men* 1140; *gadering* 1137; *consilium sapientium regni* (*sapientiores* later on) a. 1178 Gesta Henr. I 207; *convenerunt apud Londoniam sapientes Anglie*; Ann. Waverlei. a. 1218. *Sapientes* is also used for the county witan in 1072 at Penenden Heath; Engl. hist. rev. 1912, 719.

[3]) Cf. *Gesetze* II 738 n. 8 b; Orderic for William II's barons; Stubbs *Const. hist.* I 372; Freeman *Norman conq.* V 412.

[4]) *Engl. hist. rev.* 1896, 741. [5]) Above § 15, n. 16.

[6]) In the Anglo-Saxon annals *hiered*, replaced in 1154 by *curt*.

[7]) Even if they alone were used, this would, of course, not prove the foreign origin of the notion: *viccomes*, a Norman name, designates the Anglo-Saxon sheriff.

Anglo-Saxon *hiered* and *micel gemot*; and Florence of Worcester called the witan before 1066 also *curia.*

64. The ecclesiastical synod under Lanfranc regained a more independent existence; henceforth the Great council is never, as the witena gemot sometimes was, called a synod; the ambiguous character of many a meeting, borrowing features from both institutions, ceases. But even under the Normans the synod used to be held at the same place as the royal court day and mostly on the days following it.[1] It was summoned, sometimes presided over, and dismissed[2] by the king, who also confirmed its canons. The aristocracy were present[3] and approved once of the canonical punishment enacted against courtiers[4]; they assented to the synodal canons in 1108.

England's relation to Rome continued to be regulated by the cooperation of the national assembly. When the Conqueror declined the papal demand of homage, he could indeed simply refer to his Anglo-Saxon predecessors. But it was with the help of the Great council that William II. disregarded the appeal of the bishop of Durham to Rome, and tried to impeach Anselm for infidelity, consisting in the profession of obedience to a pope not recognised by the kingdom, and that Henry I. succeeded in retaining the oath of homage to be given by the bishop to the crown, together with the right to appoint his candidate. The assembly approved of the royal embassies to Rome in 1102 and 1115, of the concordate in 1107, and of the resistance to the papal legation in 1116. The barons, writes the king to the pope, would, even against his personal will, not suffer a detriment to the crown. Clearly they are defending the state against hierarchical pretensions as nationally as witan ever could have done.[5]

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[1]) A. 1086; a. 1115 Eadmer ed. Rule 231.

[2]) A. 1102; above § 23, n. 6. [3]) A. 1102. 1141. 1151.

[4]) Stubbs I 370; Böhmer *Kirche und Staat* 92. 95 sq.

[5]) Nor can the barons' pretension to be consulted on the marriage of the king's heiress (Maud's Angevin marriage) be called feudal. Cf. Henr. Huntingdon. a. 1131.

The bishops were nominated by William's sons and grandson not without the influence of the baronage; the archbishopric of Canterbury in 1093[6], 1114[7], and 1123, that of York in 1109[8], the bishopric of Bath in 1136[9] were filled up with the counsel of the barons. Henry with this council invited Anselm back in 1100. It was not only against the king personally, but against his Great council that the bishops of Durham and Canterbury appealed to Rome in 1088 and 1103. With the Great council of the princes the Conqueror professes to give his charter of the independence of the court christian.[10] The lawsuits between the bishoprics of York and Worcester, and between an abbey and the diocese about the right of burial[11], were terminated before earls and nobles. The see of Ely was founded with the counsel of the nobles; and the frontiers between the dioceses of Llandaff and Saint Davids were discussed in Great councils 1127—1132.[12] The English church remained under national sway for two generations longer than the Norman, because the English commonwealth resisting Gregorianism could rely on traditions handed over from the Anglo-Saxon state church. Eadmer, indeed, derived William's caesaropapism from a Norman pattern, and it is true that the Norman duke also had ruled the ecclesiastical synods and the intercourse with Rome[13], and that king William combined the power, up to then divided between government and assembly. But a scion of Anglo-Saxon blood and a disciple of Gregorianism, such as Eadmer was, felt only too glad to suppose the fetters binding the church to the state to have been riveted by hated Norman statecraft.

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[6]) Eadmer.

[7]) *conventu regni electus*; *affuerunt principes* id. 227.

[8]) Anselm to Paschal II.

[9]) *communi vestro consilio* Stubbs I 373.

[10]) The exemption of Battle abbey from the diocese is also given *consilio episcoporum ac baronum meorum*; Chron. de Bello 26.

[11]) Bigelow *Placita Anglonorm.* 136.

[12]) *Generale concilium* Flor. Wig. 1127; *magnum placitum apud London*; Henr. Huntingdon. 1132.

[13]) Böhmer 32 sq.

In reality the Anglo-Saxon commonwealth had expelled bishops and given their sees to other men: a practice not ventured by the Conqueror without Roman authorisation, and, though desired, not imitated by his sons.

While the national assembly in Norman times clearly detaches itself from the synod, it sometimes can scarcely be distinguished from the court council, with which it often shares the name of *curia regis*. Governmental administration, advancing under William and his sons with astonishing quickness, soon requires a trained staff of civil officers.[14] They, and no longer the witan in mass, begin to attest royal documents in a much smaller number; they represent a permanent governmental board.[15] The same 'peaceful revolution, shifting the most important state affairs from the national assembly to a narrow court council, conquered at the same time in France[16]: not a foreign conquest, but higher development worked the change.

65. The membership composing the Great council remained, as that of the gemot had been, aristocratic, half ecclesiastical, half secular. Bishops, abbots, earls, and court officers, who are found in the assembly before and after 1066, were in the Conqueror's first years in part personally identical with the counsellors who had surrounded the Confessor, and in the later years their official successors. Nor was the way of selecting prelates much changed by the Conquest: court chaplains and crown favourites offered the majority of bishops and abbots before and after; only the influence of the assembly on the choice had partly fallen to the governing court council. But was not the basis of their seat essentially altered by feudality? In the first place we doubt whether the Conqueror exacted a feudal oath from a man like Aldred of York or Wulfstan of Worcester and degraded the ownership of their episcopal

[14]) Probably this is meant by Suger: *Henricus cum consilio peritorum et proborum virorum regnum disposuisset.*

[15]) Some of the functions generally ascribed to the national assembly seem to me rather to belong to the government board.

[16]) Luchaire *Manuel instit.* 500.

land into feudal tenure. He possibly rested content with their swearing fealty and becoming his men as they had been the Confessor's. This question affecting the transitional years only, may, however, be left aside. Under the Conqueror's sons the prelates doubtless did feudally hold baronies of the crown. But is it on this feudal basis that their seat in the Great council was founded? The tenet has not been proved, militates against several counterarguments[1], and, if it be true, in our view lacks constitutional importance. The usual official style distinguished bishops from barons, where both classes appeared as the two parts of the Great council; this fact seems to show that the baronial side of a bishop's office was not the only basis of his membership. Furthermore, the Great council on its ecclesiastical side comprised also later on[2] archdeacons, cathedral deans, and priors, who all of them never were tenants in chief. Is it at all likely that their membership should have tacitly contradicted a constitutional rule restricting council seats to barons? Lastly, the Anglo-Norman bishops, instigated by archivists of Anglo-Saxon race, eagerly watched that the political privileges acquired by their predecessors were not lost to their bishoprics; would they have suffered their precious right of counselling the crown henceforth to depend on a newfangled tenurial theory?[3] The ecclesiastical dignity at the head of a diocese indissolubly intertwined with the ruling of a large territory, continued, as it seems to us, to offer the sufficient foundation of a council seat for most of the bishops. Not a small part, however, possessed powerful voices for other reasons, which also have nothing to do with feudality.

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[1]) One counterargument ought, indeed, to be dropped: the bishop of Rochester, though a member of the Great council, received his temporalities from the archbishop; but he remained a tenant in chief.

[2]) A. 1177. 1205. 1213. 1265.

[3]) The monk of Battle, wanting to explain why his abbot was present at the king's easter Great council, does not allude to the fief or to the position as baron: *affuit inter regni primores in curia, uti regiae aulae secretis non exclusus*; Chron. de Bello 49.

Above all, the archbishop retained his paramount position as the king's chief adviser and head of the assembly. Several other bishops conducted the central administration of the state. If, as is possible, they never thought of Dunstan or Stigand of Canterbury or of Wulfstan of York, their predecessors in office, they still in daily routine used the records written or the legal customs formed under them. Surely, it was not as a feudal steward or as a baron, but as the prime minister of the state that Roger of Salisbury appeared in the Great council.

The number and the importance of the court officers increased with the growth of the king's civil administration, financial institutions, military power, and court splendour. They acted in the Great council on account of the king's confidence and their business capacity; certainly not all were feudatories. Not so were all the royal knights[4], a class which, as the Anglo-Saxon annalist tells us, appeared also at the three court festivals.[5] A third non-feudal element, at least in some Great councils of the twelfth century which elected and deposed a king, was introduced in the Londoners: the citizens derived this privilege most likely from the witena gemot in Anglo-Saxon times.[6]

The barons of the Conqueror depended more directly on him, than earls and thanes had done on the Anglo-Saxon king. It is true that five generations ago, these latter also had become the king's men, that their bookland had been given to them or their ancestors by the crown, and that it stood under crown jurisdiction. But since 1067 the barons owed all their land and all their social privilege

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[4]) Above § 39, n. 4. 47, n. 16.

[5]) That 'every tenant-in-chief was expected to produce his full military quota' in the Great council seems impossible to me. In 1086 appeared at Salisbury '*witan* and the more important landowners, mesne vassals among them'. I infer that the Annalist comprised under witan only king's vassals, but not all of them. This meeting served for delivering the fealty-oath, not for council, nor is it called a *gemot* or a court.

[6]) Above § 40. About other non-feudal members (the king's family, strangers, sheriffs) see Adams *Origin Engl. constit.* 62.

to this present king; they were obliged to do him much more military service and to concede to him many more rights and dues in case of wardship and marriage; when their heir would enter, he had to pay not only a relief far above the Anglo-Saxon heriot, but wanted the confirmation of his right of succession by the king as his feudal lord: a precariousness unknown before 1067, when the heir had lawfully seised his father's land without the crown's interference. Furthermore an Anglo-Saxon earl, though formally deriving his magistracy from the crown, and a king's thane, without even this check, generally possessed and, owing to office or privilege, ruled the same tract of land that had belonged to their ancestors. While this old high nobility had disappeared before the Conqueror's later years[7], the new earls[8] and barons, not descendants in blood from their predecessors and prepossessors, had no root in the country nor in the heart of the people. Henceforth the king, the lord not only of all the men, but also of all the soil, was no longer, as the Anglo-Saxon monarch had sometimes professed to be, the first of the witan; he towered high above them all.

While, therefore, we attribute to feudality an important share in the great change that came over the assembly under the Conqueror, we still believe a deeper and more far reaching cause to lie in the general conditions ensuing upon the foreign conquest. The persons of the aristocracy were, no doubt according to a systematic plan, more and more Normanised. In consequence the Great council also got quite another aspect, without any legal measure being required, possibly even without any conscious intention of aiming at this special goal. The advisers of the Norman duke formed the earliest privy council of the Anglo-Norman king[9]; but they were not transferred as a corporate body, nor did they act without English colleagues, and they

[7]) See, however, a. 1068 Earle 431.

[8]) Adams *Origin of Engl. constit.* 24 emphasises how 'solid principalities' early Norman earldoms were.

[9]) Pike *House of Lords* 23 sqq.

became soon English landowners or prelates. A more trenchant incision consisted in the fact that in the Conqueror's later years prelates, court and state officers and lay nobles were foreigners, who shared no common traditions with the English people, spoke French[10], and wrote charters and laws in Latin. Legal history must emphasize the immense loss suffered by national development, when the venerable mother tongue, used for more than four centuries, was silenced in favour of foreign idioms in official documents, juristic literature, and oral discussion in the higher courts of law. The moral power of the crown grew, to the disadvantage of the Great council, when it protected the French invader against murther from the furious natives, and the poor villains against their greedy lord. The reason why the profound change in the national assembly was not lamented as a special disaster by the Anglo-Saxon patriot, nay was not even noted, lay in the undeveloped, vague state of the witena gemot[11]: it had remained to the last a mere committee of aristocratic society; it had constantly varied just as king and nobility personally changed. When these two became foreign, the denationalisation of the state assembly followed as a matter of course.

66. The Conqueror's rule of keeping court on the three high festivals of the year was a French novelty. Though later on in practice often disregarded, in time as well as place, as a theory it survived[1] until Stephen's reign. Its elements had formed part of Anglo-Saxon custom too[2]; Winchester was the old residence, Westminster the Confessor's favourite. Some other places[3] of later Great councils had also seen witena gemots before. The new regularity of the periods when they were to meet, might appear rather as a higher development than as an incisive

[10]) Will. Malmesbur. *Pont.* IV p. 284.

[11]) Below § 71, n. 1.

66. [1]) [*Henrico I.*] *in pascha apud Wintoniam coronato,* in connection with a judicial court; Chron. de Bello 49.

[2]) Above § 45 sq.

[3]) Woodstock, Oxford, above p. 46 sq.

change. But it was a trenchant alteration indeed, when the national assembly sank into a ceremonial decoration of the court, which now combined the majesty of the crown with paramount feudal lordship. One might imagine that Great council and court festivity were not always connected; but their identity is expressly attested by William of Malmesbury and can be proved in a few instances.[4]

67. The curtailment of the competence of the national assembly under the Conqueror ensued partly from feudalisation, partly from other circumstances. It was not the effect of distinct decrees, perhaps not even intended as a special aim. When the sovereign had become the supreme lord of whom all the soil of England was held, and when king's bocland and governmental property had merged into *terra regis*, the assembly's confirmation of his gifts of land dwindled first into a meaningless form[1] and then ceased altogether. — Since the fief involved personal military service for the lord, the king need no longer apply for the assembly's good will to lead a war. Even in this respect, however, feudality was not the only basis of the strengthened monarchy: the Norman kings paid soldiers and had in moments of danger to invoke the Anglo-Saxon form of army against Norman nobles. — That the heavy taxation in the Norman age depended on the confirmation by the Great council, in the same way as Danegeld used to be decreed by the witena gemot, is not reported under the Conqueror, and only in a few instances under his sons. But the Conqueror deliberated on the scheme of Domesday book with his *witan;* and the barons granted in 1096 the means for the acquisition of Normandy[2], and at least one aid under Henry I.[3] They also assisted in the regulation

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[4]) E. g. a. 1085/6.

67. [1]) A. 1068 in *Engl. hist. rev.* 1896, 740; cf. Pollock and Maitland *Hist. Engl. law* I 51. Privilege for Battle *consilio episcoporum ac baronum*; Bigelow *Plac. Anglo-Norm.* 15.

[2]) Leges Edw. Conf. 11, 2.

[3]) Chron. Abingdon. II 113.

of the feudal 'relief' under William II.[4] Feudality limiting arbitrary taxation appears as early as in 1100, when Henry's coronation charter frees from public tax and base non-military service the domain of the knight's fee held in chief. — In the same feudal spirit this charter concedes to the barons a deliberative vote when the king chooses the husband for the heiress of his tenant in chief. — It is on the other hand, from a national point of view that the barons obtained from the throne candidate the concession to be asked for their consent as to the retaining of the forest created by his father: an admission that implied the abolishment of his brother's afforestation and the invalidity of a future one by the sole will of the king. — The nomination of earls, just as that of prelates[5], was taken by the Conquëror into his own hands: it had belonged to every strong monarch before him too. — He liked to receive foreign ambassadors on the festival court days, but only in order to show his imposing splendour[6], not to have their business transacted by the Great council. His son, however, concluded his Lotharingian marriage not without the counsel of the assembled barons.[7]

As to legislation we saw above the Great council cooperating in the creation of the Court christian, in the preparation of Domesday, and in Henry's feudal and forest reforms. But, according to the solemn words of the charter of 1100, it was with the counsel of his barons that the Conqueror had amended the *Laga Edwardi*[8] generally; the barons obtained from the throne candidate in 1100 this improved Anglo-Saxon constitution, that is the unwritten customary law combined with those statutes, which had been given, chiefly by Cnut, with the confirmation of the witena gemot. The Great council as a corporate body, therefore, felt itself as the guardian of English liberties and as the successor of the witan. During five centuries

[4]) *Gesetze* II 629 n. 3. 4 c. [5]) But see above § 64, n. 6 sqq.
[6]) Will. Malm. *Reg.* III § 279.
[7]) Stubbs *Const. hist.* I 373. Cf. above § 64, n. 5.
[8]) *Gesetze* II 738 n. 13.

the English monarch had to swear in the coronation oath, that he would keep Edward's law.[9] That many a baron individually stepped into the shoes of an Anglo-Saxon thane had been remarked long since; here, however, we get the proof that the Great council consciously continued the *gemot*. Any possibility that it merely was a Norman *curia ducis* transplanted on English soil, or that it rose after 1066 solely from foreign seed, is herewith absolutely excluded. Among the three lawbooks professing to contain William's laws and compiled under Henry I. partly from the Conqueror's real legislation, two mention the counsel of the nobility. Nor must the autocratic form of the legislative writs of William and Henry be adduced as an argument for their absolutism: it is found also in Cnut's political letters.[10]

The Great council could act as the paramount court of law, just as the witena gemot had done. Civil lawsuits, mostly turning on real property or territorial privilege[11], had to allege Anglo-Saxon landbooks and to rest on the legal knowledge of natives.[12] But under Henry I., no longer the national assembly, but the king's court in the more restricted sense, judged on these matters.[13] — As a criminal court against bishops and lay nobles, the Great council can scarcely be called the continuation of the witena gemot, though it replaced this.[14] It is rather feudally constituted, uses Norman procedure, and, never referring to Anglo-Saxon custom, judges according to Norman law[15]: its predecessor

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[9]) Leop. Legg *Engl. coronation records* XXIX sqq. 87. John in July 1213 *iuravit quod leges Eadwardi revocaret*; Rog. Wend. = Mat. Paris. ed. Luard II 550.

[10]) Cf. *Gesetze* II 469 sq. n. 15 c. 17. 22 c.; Bigelow *Placita Anglo-Norm.* p. 2.

[11]) The suit of Lanfranc against Odo was decided in the county, but the sentence confirmed by king and princes, ib. 9.

[12]) *Ægelricus legum terrae sapientissimus* ib. 7. In an ecclesiastical lawsuit Anselm asked Wulfstan's advice in 1094; Eadmer 46.

[13]) Bigelow p. 108. 123 (*regii consiliarii*). 133 (no bishops).

[14]) Leges Henrici 20, 3.

[15]) *secundum leges Normannorum* a. 1075 Bigelow 11; cf. a. 1102. 1107 ib. p. 83. 94.

was the *curia ducis* over sea. It is, therefore, but a casual similarity, if earl Robert in 1075, just as earl Godwin in 1051, vainly demanded a safe conduct, instead of obeying the summons, and was treated by government as a public enemy. Even the bishops Odo of Bayeux[16], William of Durham, and Anselm of Canterbury in 1095 were tried for felony as feudataries. In a criminal suit that might cost all property and chattels, even life and limb, the Norman had obtained, by an early law of the Conqueror, the French trial by combat, though the tribunal and the adversary were English.

68. According to a former theory, the vote of the Great council was said to have been degraded from the decisive or confirmative force possessed by the witan, to a mere deliberative advice. This description is far too sweeping, before[1] and after 1066. It is true that the national assembly suffered an immense loss of influence after the Conquest, when monarchy gained permanently the great wealth from Anglo-Saxon spoil, the feudal lordship of the soil, the homage of all subjects, the arbitrator's position over the helpless people and the dependent aristocracy, the splendour of the royal household, and a strong central administration by court officers. But all these advantages coalesced to form the gigantic power, such as was wielded by the Conqueror, only when a great statesman knew how to combine them. His overwhelming pressure was bitterly resented by nobility and prelacy; but they did not attempt constitutionally to limit it before the disputed succession of 1100 inclined Henry to promise reforms. Permanent absolutism was avoided also by other circumstances, which partly ensued from measures that had intended the contrary. When the Conqueror abolished bookland and deprived its possessor of the right to dispose freely of his property, the fief introduced by him depended indeed on the crown, but descended legally to the born heir, and was sure to form the base of an aristocratic class feeling, while bookland had been liable to be bequeathed to a church.

[16]) Böhmer *Kirche und Staat* 174. 68. [1]) Above § 27.

Lastly we must not forget that the Norman barons were courageous warriors and proud characters not easily subdued. As early as 1095 they ventured in Great council to resist the Red king, who had succeeded in intimidating the bishops; in this their refusal to condemn Anselm (not as late as under Henry II.) we find the first instance that the royal will did not conquer in the national assembly.

69. The election of a king by the Great council, with the old coronation oath and the abuse of the aristocracy selling their consent for promises[1] of the candidate, goes back to the witena gemot. So does the important part played by London under Stephen, which cannot be derived from feudality.[1a] The election was indeed meaningless in 1087, when William II. stood as the Conqueror's designated successor without a rival. But the consent of the nobles was officially recognised as necessary in 1100[2] and 1126, and their influence became a disastrous reality in 1135 and 1141. — A deposition of the king was tried in 1075[3] and almost accomplished in 1141; in the latter case the Great council did act; in the former the rebellious earls, if successful, would, no doubt, have obtained its sanction. Neither these insurgents, however, nor two lawbook writers under Henry I.[4], to whom the deposition of a monarch seems constitutionally possible, refer to Anglo-Saxon precedents.[5]

70. We will then draw our conclusion. The Great council under William and his sons was indeed similar to the Norman ducal court — which was also not merely feudal[1] — in name, in its formation chiefly from prelacy[2]

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[1]) A. 1087. 1100. 1135. 1199. [1a]) Above § 40.

[2]) *witan to cynge gecuron*; Ann. Anglosax; *coronatus communi consilio baronum* Charta Henr. cor.; 'by clergy and people' letter to Anselm.

[3]) *woldon þone cyng gesettan ut of cynedome*; Ann. Anglosax.

[4]) Hugo Floriac., who dedicates his tract against Gregorianism to Henry I. (Böhmer 168), and Leges Edw. Conf. 17, 1.

[5]) Above § 50.

70. [1]) Luchaire *Manuel instit. Franç.* 201.

[2]) The prelates seem, however, not very important in Normandy; Böhmer 30[8].

and nobility, and in competence.[3] It spoke French. In the Conqueror's later years it consisted almost only of foreigners. The majority of its members sat because they held fiefs in chief. The rule of its three annual meetings came from France. The curtailment of its competence and the diminution of its influence were partly the consequence of feudality. Its criminal law and procedure were Norman. On the other hand, the bishops in the Council were the legal successors of those in the *gemot*; the Council judged civil lawsuits according to Anglo-Saxon law, and demanded that the Anglo-Saxon constitution be upheld.

This result is in perfect harmony with what we know of the Conqueror's general policy. It was not the Norman baronage, still less the Norman people or commonwealth that conquered England. The Norman duke who acquired the crown of England, succeeded in drawing the most profitable consequences from his double capacity as the national monarch of the English and as the feudal lord of Norman aristocracy. But he never intended to remodel England's constitution after Norman pattern, or to merge both countries into one state. He retained the English chancery with its old forms[4] and the local administration. Immediate posterity saw in him so little a revolutionist, that about 1135 he was said to have laid down, by means of an inquest by jury, the essence of old English constitution and to have confirmed it. Likewise he changed the witena gemot only so far as was advantageous for his crown; he did not abolish it. Before fifty years had passed after the Conquest, the assembly appeared again as the national protector of popular liberties. A royal jurist praising the reforms of the first half of Henry I.'s reign exclaims: 'Now end the manifold vexations inflicted upon us by the nobility, since now reappears the once famous senate!'[5] What else can he mean than the revival of the witena gemot?

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[3]) Cf. Steenstrup *Etudes prélimin.* 338.

[4]) Stevenson in *Engl. hist. rev.* 1896, 734.

[5]) *Gesetze* I 534, 23.

X. 71. The political progress of the English people before the Norman conquest is generally ascribed to monarchy, and to those few great kings with whose names the reforms have been connected by contemporary reports. We shall indeed never know how much, for instance, of the good local administration or of the premature financial order really was the merit of a wise court council backed by the force of the witan. But then we ought, on the other hand, not to charge them with the responsibility for the glaring insufficiency of the military preparations against Danes and Normans; we ought rather to impute it to the federative character of the state and the imperfect connection between government and subjects. If we are to look out for institutional causes, explaining why Norman tyranny could for a time push the assembly into the background, we should point out that the germs, which seemed fruitful enough in the seventh century, failed to develop[1] in four centuries into a constitutional factor able to assist and control monarchy from a broad national point of view, because the gemot omitted to organise itself as an independent institution, to determine rules as to who should be summoned and how, or when and where a meeting should take place, to fix its competence, proceeding, recording, and executive force, and lastly to limit its sphere over against the rival powers of king, court council and ecclesiastical synod.

Still we must not undervalue the historical merit of the witena gemot on behalf of the English nation. Together with the king it represented the unity of England.[2] He was mortal; it stepped into its most important task of electing his successor when he died. When powerful earls threatened to grow into autonomous dynasts and to revive heptarchic tribal aspirations, it kept England together. It assembled Englishmen from districts far distant and speaking different dialects; it made the higher society of Wessex,

[1]) Above § 65, n. 11.
[2]) Above § 25 n. 1.

Mercia and Denalagu acquainted with each other.[3] Furthermore, it founded a connection between monarch and aristocracy not on vassalage or kindred, but on the political duty of a citizen of the commonwealth. Again, it taught[4] men of different order and social status and various interest to deliberate with each other, to muse upon abstract questions, to listen to a sagacious or learned man in spite of his lower rank, to decide on political matters of their common country and nationality, and so gradually to elevate their mind from a merely personal feeling of fidelity for a living king or tribe to the higher notion of an eternal public law. Lastly it left to its successor, the Great council, a political ideal, round which the constitutional reformers limiting the monarch's tyranny could gather. Parliament has to revere one of its parents in the witena gemot of the Anglo-Saxons.

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[3]) *witan widan gesamnod; widan gegaderode of Westsexan, Myrcean, Denon, Englon*; a. 997 Ke 704.

[4]) Above § 6.

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